

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 5, 2013**

**CASE OF ALBÁN CORNEJO *ET AL.* v. ECUADOR
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on merits, reparations, and costs delivered by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, or “the Court”) on November 22, 2007 (hereinafter “the Judgment”).¹ In this Judgment, the Court indicated that the authorities of the Republic of Ecuador (hereinafter “the State” or “Ecuador”) had not responded seriously and with the due guarantees to the complaint filed by the parents of Laura Susana Albán Cornejo, by failing to open the investigation into her death promptly. In addition, the State itself acknowledged that the authorities had not conducted a diligent and serious investigation in order to locate one of the treating physicians and, if appropriate, obtaining the extradition of the accused. It decided that the State was responsible for the violation, to the detriment of Carmen Susana Cornejo Alarcón de Albán (hereinafter “Mrs. Cornejo”) and Bismarck Wagner Albán Sánchez, parents of Laura Susana Albán Cornejo, of Articles 8(1) and 25(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) in relation to Articles 4, 5(1) and 1(1) of this treaty, and of Article 5 of the Convention, in relation to its Article 1(1), owing to the absence of a judicial response to clarify the facts.

2. The Orders on monitoring compliance with judgment issued by the Court on July 6, 2009, and August 27, 2010. In the latter Order, the Court declared:

1. That it will maintain open the procedure of monitoring compliance with the aspects pending compliance in the present case, namely:

a) To publish operative paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Judgment, in the terms of paragraph 10 of th[e] Order (*fifth operative paragraph of the Judgment*);

b) To disseminate widely, within a reasonable time, the rights of patients, using the appropriate media and taking into account the legislation that exists in Ecuador and the international standards, in the terms of paragraphs 162 and 163 of the Judgment (*sixth operative paragraph of the Judgment*); and

¹ According to the facts of the case, on December 13, 1987, Laura Susana Albán Cornejo entered a private hospital in Quito, Ecuador. On December 18 that year, while under medical treatment, she died, presumably as the result of a medicine that was administered to her. Her parents, Carmen Susana Cornejo Alarcón de Albán and Bismarck Wagner Albán Sánchez, in their interest to clarify the homicide of their daughter, searched for years to obtain justice and the punishment of those responsible.

c) To implement, within a reasonable time, a program to educate and train agents of justice and health care professionals on the laws enacted by Ecuador with regard to patients' rights, and on the punishment for failing to comply with them, in the terms of paragraph 164 of th[e] Judgment (*seventh operative paragraph of the Judgment*).

3. The reports of the State received on December 27, 2010, March 4, 2011, June 21, July 27 and December 2 and 13, 2012, in which it referred to the monitoring of compliance with the Judgment.

4. The communications of the Secretariat of the Court (hereinafter "the Secretariat") of January 10, February 17 and September 16, 2011, and March 8 and May 10, 2012, in which the State was required to submit a more detailed and updated report on the measures taken to comply with the fifth, sixth, and seventh operative paragraphs of the Judgment (*supra* having seen paragraphs 1 and 2).

5. The briefs of Mrs. Cornejo, victim in the case, received on February 22, April 26 and November 15, 2011, May 21, July 23, September 19 and 30, and November 15, 2012, and January 17, 2013, in which she presented her observations on the State's reports.

6. The briefs of the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") received on May 4, 2011, August 6 and September 12, 2012, and January 7 and 18, 2013, in which it presented its observations on the State's reports.

7. The communication of the Secretariat of November 14, 2012, in which it required the State to provide further information on the publication that was pending (*supra* having seen paragraph 2). On December 2, 2012, the State presented the information requested, and on December 13, it forwarded the originals of the respective publications.

CONSIDERING THAT:

1. One of the inherent faculties 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 American Convention" or "the Convention") since December 28, 1977, and accepted the compulsory 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 States must ensure that the decisions of the Court in its rulings are implemented at the domestic level.²

4. Owing to 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 rulings corresponds to a

² Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131, and *Case of Salvador Chiriboga v. Ecuador. Monitoring compliance with judgment*. Order of the Court of October 24, 2012, second considering paragraph.

basic principle of the law on the international responsibility of the State, supported by international case law, according to which States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously indicated by the Court and established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a State may not invoke the provisions of its internal law as justification for its failure to perform a treaty.³ The treaty-based obligations of the State Parties are binding on all the powers and organs of the State.⁴

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.⁵

7. The States Parties to the Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. This obligation includes the State's duty to inform the Court of the measures taken to abide by the rulings of the Court in the said decisions. Prompt compliance by the State with its obligation to advise the Court of how it is fulfilling each aspect ordered by the latter is essential for assessment of the status of compliance with the Judgment as a whole.⁶

A) To publish operative paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Judgment (fifth operative paragraph of the Judgment)

8. Regarding the fifth operative paragraph, which relates to the State's obligation to publish operative paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Judgment in the newspaper, "*El Comercio*," "referring to the publication of March 3, 2010, and clarifying that, on that occasion, the said paragraphs were omitted,"⁷ the State advised that it had published the said operative paragraphs on March 16, 2011, "in a newspaper with widespread circulation." The State attached a copy of the publication of operative paragraphs 4, 5, 6, 7, 8, 9 and 10 of the Judgment to its communication of December 13, 2012, and this confirms that the publication was made on March 16, 2011, in the newspaper, "*El Comercio*."

9. Regarding the operative paragraphs, pending publication, in her brief of January 17, 2013, Mrs. Cornejo indicated that the publication of the operative paragraphs was made in

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 Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Court of September 7, 2012, fourth considering paragraph.

⁴ Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of November 17, 1999, third considering paragraph, and *Case of Barrios Altos v. Peru, supra*, fourth considering paragraph.

⁵ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of Barrios Altos v. Peru, supra*, fifth considering paragraph.

⁶ Cf. *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Court of September 22, 2005, seventh considering paragraph, and *Case of Salvador Chiriboga v. Ecuador, supra*, third considering paragraph.

⁷ *Case of Albán Cornejo et al. v. Ecuador. Monitoring Compliance with Judgment*. Order of the Court of August 27, 2010, tenth considering paragraph.

the Sports Section, part 3, of the newspaper "*El Comercio*," on Wednesday, December (*sic*) 16, 2011. She stated that "a judgment of the Inter-American Court against the Ecuadorian State for violation of human rights [is] very different from sports information."

10. In its observations of January 18, 2013, the Commission indicated that the publication of the operative paragraphs of the Judgment "conformed to what the Court had indicated, so that [...] the State had complied with the fifth operative paragraph of the Judgment."

11. The Court notes that the State has advised that it published the operative paragraphs of the Judgment that were pending publication on March 16, 2011, in a newspaper with widespread circulation (*supra* considering paragraph 8). Then, in response to a request from the Court, it forwarded a copy of the publication which included the information that the Commission had indicated was missing (date of publication and newspaper in which the publication was made); in other words, the publication was made on March 16, 2011, in the newspaper "*El Comercio*." Both the Commission and Mrs. Cornejo have stated that the said publication has been made, even though the latter indicated that she did not agree with the fact that it had been published in the sports section. The Court takes note of Mrs. Cornejo's observation about the section of the newspaper "*El Comercio*" in which the publication was made. However, it also notes that the said publication was made in the terms ordered in the Judgment and in the Order of August 27, 2010. Based on the foregoing, the Court finds that the State has complied fully with the measure ordered in the fifth operative paragraph of the Judgment.

B) To disseminate widely, within a reasonable time, the rights of patients, using the appropriate media and taking into account the legislation that exists in Ecuador and the international standards, in the terms of paragraphs 162 and 163 of the Judgment (*sixth operative paragraph of the Judgment*)

12. Regarding the sixth operative paragraph, the State advised that "it had awarded a consultancy contract in order to prepare a training module on the human rights of patients [and] that included the legal framework." In addition, it indicated that it had taken steps through the Ministry of Justice, Human Rights and Worship to establish institutional cooperation agreements with the National Health System and to introduce the human rights approach into public policies, and mentioned different competences of the National Health Council in this regard. It also referred to the creation of the "Comprehensive Family, Community, and Intercultural Health Care Model (MAIS-FCI)" designed to allow people to control "health care factors" through processes of information and participation. The State also stressed the "intention" "to implement health care promotion strategies and actions, [...] information and educational campaigns on the rights of patients, [...] public policies with regard to health care [...] with an intercultural, gender and human rights approach" and "the elaboration of protocols and projects that allow a broader dissemination and promotion of patients' rights." All of this "[...] seeks to ensure that health professionals are aware of both the national and the international laws in force on the rights of patients, and special health care brigades or groups will be created to promote and disseminate patients' rights [...]." Lastly, on December 2, 2012, the State advised that, in October 2012, the Ministry of Public Health had published an "important extract" from the articles of the Law on the Rights and Protection of the Patient in its Information Bulletin No. 008 entitled "*Mi Salud*" [My Health], in the newspapers, "*El Comercio*" and "*El Telégrafo*."

13. In her observations of July 23, 2012, Mrs. Cornejo stated that this obligation “has really not been met in any way whatsoever, even though almost five years have passed since the [...] Judgment was delivered,” and that, essentially, the report presented by the State on June 21, 2012, reiterated a previous one, which “refers to a national health plan, but does not mention anything about the Law on the Rights and Protection of the Patient”; moreover, that the plans and programs reported by the State were not necessary to comply with the measure, because all that is required is the dissemination of the Law on the Rights and Protection of the Patient. In this regard, she affirmed that “the public is almost unaware of [the law; consequently] compliance [with this measure] is important, not as a measure of satisfaction in a specific case, but to protect and safeguard the rights of all patients.” Then, in her observations of January 18, 2013, Mrs. Cornejo indicated that the State had advised her that an extract from the Law on the Rights and Protection of the Patient had been published in issue No. 008 of the Bulletin “*Mi Salud*” and, according to Mrs. Cornejo, the bulletin is an “informational leaflet that promotes the efforts of the Government.” She added that, by telephone, they offered to send her two issues of the Bulletin “*Mi Salud*,” but they had not done so. In addition, she indicated that, on September 6, 2012, she and her husband had attended a meeting held at the Sub-Secretariat of Human Rights of the Ministry of Justice at the invitation of Felipe Azansa, legal expert, which dealt with compliance with the sixth operative paragraph of the Judgment. According to Mrs. Cornejo, during this meeting, she and her husband insisted on the realization of a “widespread campaign to disseminate” the Law on the Rights and Protection of the Patient, “using the appropriate media,” in order to comply with the terms of the Judgment. Lastly, she indicated that the Judgment had not been complied with.

14. In its observations of August 6, 2012, the Commission considered that:

Despite the time that has passed, the information provided [by the State] relates to a general mention of public policies on health matters and organizational reforms of the authorities [...], without indicating how these would contribute to overcoming the deficiencies verified in the case, or their specific relationship to the measure of reparation ordered.

It concluded that, at that time, the State had not been able to comply with the measure ordered regarding the “distribution of informative pamphlets or the display of patients’ rights at health care centers.” In its observations of January 18, 2013, the Commission “t[ook] note of the publication [of the] extract of the Law on the Rights and Protection of Patients”; nevertheless, it considered that the State “should [...] provide more information on the implementation of the measures to disseminate patients’ rights,” and mentioned several points that, in its opinion, should have been included in the report.⁸

15. The Court takes note of the information presented by the State, in particular, of the dissemination of an “important extract” of the Law on the Rights and Protection of the Patient. Nevertheless, based on the above and the information provided previously by the State,⁹ the Court notes that, although nearly five years have passed since the delivery and notification of the Judgment, the information available does not show that the measure

⁸ The Commission indicated that the State should provide information on “the actual situation of the execution of the Interactive Human Rights Manual and its implementation with the different public authorities: (i) the use of different media in order to disseminate patients’ rights in accordance with international standards; (ii) the measures taken to ensure that all health care services have several copies of the Law on the Rights and Protection of the Patient and that the text of the law is visible to the public, and (iv) the measures taken to carry out a program to educate and train agents of justice and health care professionals on the laws that Ecuador has enacted with regard to patients’ rights.”

⁹ As indicated in the eleventh considering paragraph of the said Order of August 27, 2010 (*supra* note 7), “the State has advised that the Ministry of Health has prepared a leaflet on the rights of patients, which is being distributed throughout the country in different health care units.”

ordered has been complied with fully. Therefore, it considers it pertinent to reiterate to the State¹⁰ that it is essential that it present, as soon as possible, a detailed updated report on the specific measures it has taken to comply with the sixth operative paragraph of the Judgment. When presenting the pertinent information, the State is requested to provide details of compliance with article 15 of the Law on the Rights and Protection of the Patient, in relation to paragraph 163 of the Judgment – to which its sixth operative paragraph relates – and which indicates the “obligation of the health services to have copies of the [said] law available to users and to display the text of the rights of the patient in places that are visible to the public.” In addition, it required the State to specify how the public policies to which it referred (*supra* considering paragraph 12) are related to compliance with the measure ordered by the Court in the said operative paragraph.

C) To implement, within a reasonable time, a program to educate and train agents of justice and health care professionals on the laws that Ecuador has enacted with regard to patients’ rights, and on the punishment for failing to comply with them, in the terms of paragraph 164 of the Judgment (seventh operative paragraph of the Judgment).

16. Regarding the seventh operative paragraph, the State advised that the Ministry of Justice and Human Rights has a training “module” on the right to health with a human rights approach in relation to the rights of patients, for agents of justice and health care professionals, with “extensive content” and covering different topics such as “structural reforms and social policy with regard to health”; its purpose is “to provide judges with a comprehensive perspective of the human right to health and [...] of the law with regard to patients.” However, the “module” requires a “broader approach” in order to be considered “effective training material.” The State advised that it was designing a “strategy” for this training and that different State entities are holding “coordination meetings” in order to reach collaboration agreements to provide the training on patients’ rights. Lastly, it assured that as soon as “the functions [of] the new units created within the Ministry of Public Health have been adjusted, it would inform [this] Court of [the details] of the training programs.”

17. In her observations, Mrs. Cornejo stated that “Ecuadorians who live in the capital” have heard nothing about “the education and training program for agents of justice and health care professionals”; hence, the State has not complied with this measure.

18. For its part, the Commission indicated that the State had not provided updated information on the implementation and monitoring” of the “modules” it mentioned. The Commission also underlined that, even before the restructuring mentioned by the State, the latter had “not adopted any specific measure and that, in addition, the reforms [...] would delay the implementation of specific measures even further. Therefore, it concluded that, five years after the Judgment, “the measure of reparation relating to the training of agents of justice and health care professionals is at an embryonic stage.

19. The Court observes the State’s failure to follow-up on certain measures that, according to the information provided by the State itself, had already been started and would be pertinent to comply with the measure of reparation ordered. Thus, the Court notes

¹⁰ Cf. *Case of Albán Cornejo et al. v. Ecuador*, *supra* note 7, fourteenth considering paragraph. This indicates that the State must specify, *inter alia*, “(a) program and timetable for disseminating patients’ rights and, if applicable, the distribution of the leaflet that has been prepared; (b) which media have been used to carry out this dissemination; (c) to which persons or groups was the dissemination addressed, and (d) which health care units have received the leaflet.”

that, although nearly five years have passed since the delivery and notification of the Judgment, the measure ordered has not yet been complied with fully. Consequently, this Court considers it necessary that the State present information on the implementation of specific measures that complement those mentioned and that are pertinent to comply with the education and training programs ordered.

20. The Court will consider the general state of compliance with the Judgment once it has received the relevant information on the reparations pending compliance.

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, 25(1) and 30 of its Statute and 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. The State has complied fully with the fifth operative paragraph of the Judgment by the publication of operative paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Judgment, in accordance with paragraph 11 of this Order (*fifth operative paragraph of the Judgment*).

2. It will maintain open the procedure of monitoring compliance with the aspects pending compliance in this case, namely:

a) To disseminate widely, within a reasonable time, the rights of patients, using the appropriate media and taking into account the legislation that exists in Ecuador and the international standards, in the terms of paragraphs 162 and 163 of the Judgment (*sixth operative paragraph of the Judgment*); and

b) To implement, within a reasonable time, a program to educate and train agents of justice and health care professionals on the laws that Ecuador has enacted with regard to patients' rights, and on the punishment for failing to comply with them, in the terms of paragraph 164 of the Judgment (*seventh operative paragraph of the Judgment*)

AND DECIDES:

1. That the State must adopt all necessary measures to comply fully and promptly with the aspects pending compliance in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

2. That the State must present to the Inter-American Court of Human Rights, by May 6, 2013, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by this Court that are pending compliance.

3. That the victims and the Inter-American Commission on Human Rights must present any observations they deem pertinent on the report of the State mentioned in the preceding operative paragraph, within four and six-weeks, respectively, of receiving this report.

4. That the Court will continue to monitor the aspects pending compliance of the Judgment on merits, reparations, and costs of November 22, 2007.

5. That the Secretariat of the Court shall notify this Order to the State, the Inter-American Commission on Human Rights, and the victims.

Diego García-Sayán
President

Manuel E. Ventura Robles

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary