

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS\*  
OF AUGUST 28, 2013  
CASE OF CASTAÑEDA GUTMAN v. MEXICO**

**HAVING SEEN:**

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter "the Judgment") of August 6, 2008, delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "this Court"), in which it declared the violation of the right to judicial protection recognized in Article 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in relation to Articles 1(1) and 2 of this instrument, to the detriment of Jorge Castañeda Gutman, who did not have an effective judicial remedy to contest the refusal to register him as an independent candidate for the office of President of the Mexican State (hereinafter "Mexico" or "the State") in the 2006 elections.
2. The brief of March 2, 2009, and its annexes, in which the State provided information on compliance with the Judgment.
3. The brief of May 7, 2009, in which the representatives of the victim (hereinafter "the representatives") forwarded their observations on the information provided by the State.
4. The brief of April 21, 2009, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), forwarded its observations on the information provided by the State
5. The Order on monitoring compliance with the Judgment issued by the Court on July 1, 2009, in which the Court declared that:
  1. The State has complied fully with the operative paragraphs of the Judgment which establish that the State must:
    - a) Publish, once, in the Official Gazette and in another national newspaper with widespread circulation paragraphs 77 to 133 of this Judgment, without the footnotes, and its operative paragraphs, within six months of its notification (*seventh operative paragraph of the Judgment*).

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\* Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not take part in the examination and deliberation of this Order, pursuant to the provisions of Article 19(2) of the Court's Statute and 19(1) of its Rules of Procedure.

- b) Pay Jorge Castañeda Gutman the amount established in paragraph 244 of the Judgment, for reimbursement of costs and expenses, within six months of its notification (*eighth operative paragraph of the Judgment*).
2. It would keep the procedure of monitoring compliance open with regard to the sixth operative paragraph of the Judgment, which establishes that the State must, within a reasonable time, complete the adaptation of its domestic law to the Convention, in order to adapt the secondary legislation and the norms that regulate the action for the protection of the rights of the citizen to the constitutional reform of November 13, 2007, so that, using this remedy, citizens are effectively guaranteed the possibility of contesting the constitutionality of the legal regulation of the right to be elected, in the terms of paragraphs 227 to 231 of the Judgment [...].
6. The briefs of September 7, 2009, March 1 and July 13, 2010, and August 29, 2011, in which the State reported on the measures adopted in relation to the aspect pending compliance.
7. The briefs of October 8, 2009, March 17 and August 10, 2010, and September 15 and November 14, 2011, and their respective annexes, in which the representatives presented their observations on the reports of the State.
8. The briefs of November 30, 2009, May 7 and September 1, 2010, and October 5, 2011, and their respective annexes, in which the Commission forwarded its observations on the reports of the State and on the information presented by the representatives.
9. The Order of the President of the Court of January 18, 2012, in which he decided to convene the parties and the Commission to a private hearing in the context of monitoring compliance with of the Judgment.
10. The arguments of the parties and of the Commission during the private hearing on compliance with the pending aspect of the Judgment held on February 20, 2012, at the seat of the Court.<sup>1</sup>
11. The briefs of April 2 and September 12, 2012 and of February 18, 2013, and the annexes to the latter, in which the State reported on the measures adopted in relation to the aspect pending compliance.
12. The briefs of February 14, March 30, September 6 and November 13, 2012, and January 15, June 5 and 14, 2013, and their respective annexes, in which the representatives presented their observations on the reports of the State, together with additional information on an application for *amparo* filed by Mr. Castañeda Gutman on January 9, 2012, in relation to this case.

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<sup>1</sup> There appeared at this hearing: for the Inter-American Commission on Human Rights: Karla Quintana Osuna, adviser; for the representatives of the victim Jorge Castañeda Gutman: Gonzalo Aguilar Zinser, Fabián Aguinaco Bravo, Santiago Corcuera Cabezut, Pedro Saez Pueyo and Manuel Rodríguez Woog, and for the State: Joel Hernández García, Permanent Representative of Mexico to the OAS; Alejandro Alday González, Deputy Director General of Cases, Democracy and Human Rights of the Ministry of Foreign Affairs; Juan José Cespedes Hernández, Deputy Director General of the Legal Advisory Services of the Federal Executive; José Luis Ceballos Daza, Judicial Clerk attached to the rapporteurship of Justice Constancio Carrasco Daza of the Electoral Tribunal of the Federal Judiciary; Sergio Arturo Guerrero Olvera, Coordinator of Jurisprudence, Monitoring and Consultation of the Electoral Tribunal of the Federal Judiciary; María Eugenia Tapia Benavides, Chargée d'affaires, a.i., Embassy of Mexico in Costa Rica; Rafael Barceló Durazo, Head of Political Affairs and Human Rights, Embassy of Mexico in Costa Rica; Rafael Elizondo Gasperín, Assistance Secretary General of Settlements of the Superior Chamber of the Electoral Tribunal of the Federal Judiciary, and Citlalli Jesica Villanueva Amador, Adviser to the Sub-secretariat of Legal Affairs of the Ministry of the Interior.

13. The briefs of April 5, 2012, and January 29 and May 20, 2013, in which the Inter-American Commission forwarded its observations on the reports of the State and on the information presented by the representatives.

#### **CONSIDERING THAT:**

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

2. Mexico has been a State Party to the American Convention since March 24, 1981, and accepted the contentious jurisdiction of the Court on December 16, 1998.

3. In view of 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. In addition, Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the State must ensure implementation of the Court’s decisions in its judgments at the national level.<sup>2</sup>

4. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of international law, supported by international case law, according to which, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.<sup>3</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.<sup>4</sup>

5. The States Parties to the Convention must ensure compliance with its provisions and their practical 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.<sup>5</sup>

6. The States Parties to the Convention that have accepted the Court’s compulsory jurisdiction must 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

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<sup>2</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, third considering paragraph.

<sup>3</sup> 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 Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, fourth considering paragraph.

<sup>4</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, third considering paragraph, and *Case of Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, fourth considering paragraph.

<sup>5</sup> Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999, Series C No. 54, para. 37, and *Case of Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, fifth considering paragraph.

rulings of the Court in these judgments. The prompt implementation of the State's obligation to report to the Court on how each element ordered by the Court is being fulfilled is essential in order to assess the status of compliance with the Judgment as a whole.<sup>6</sup>

7. In accordance with the first operative paragraph of the Order of the Court of July 1, 2009 (*supra* having seen paragraph 5), in this Order the Court will assess compliance with the sixth operative paragraph of the Judgment and will refer to other aspects related to compliance with the Judgment that the parties have reported to this Court.

8. The Court notes that this is the first time that it assesses compliance with the measure of reparation concerning the adaptation of domestic law ordered in the Judgment. Consequently, in this Order, it will summarize the principle arguments of the parties and the Commission concerning this measures that have been presented from October 2008 to the date of issue of this Order (*supra* having seen paragraphs 2 to 4, 6 to 8 and 10 to 13) and will consider those that are relevant to compliance with the said reparation.

***A. Obligation to complete the adaptation of domestic law (sixth operative paragraph of the Judgment)***

*Arguments of the parties and of the Commission*

9. The State advised that, the legislative reforms published on July 1, 2008, made it possible *inter alia*, for any of the chambers of the Electoral Tribunal of the Federal Judiciary, in proceedings for the protection of a citizen's politico-electoral rights (hereinafter "protection proceedings"), to determine that a legal norm should not be applied because it was considered unconstitutional. It also argued that these reforms established an individual's "right to file [protection] proceedings on his own behalf through his legal representative." Furthermore, it indicated that the adaptation of domestic law had been "consolidate[d] by the 2011 constitutional amendment concerning human rights that specifically permitted the judgments of this Court to be incorporated into the examination of the merits of cases filed before the Electoral Tribunal." In this regard, the State indicated that the changes that had been made established a system of mechanisms of appeal, as provided for in the 2007 constitutional reform, and this, "together with the rulings of the Electoral Tribunal of the Federal Judiciary, provided by the State[, prove] that the effective remedy ordered by the Court in its judgment exist in both law and practice."

10. Mexico argued that the criterion used by the Court to find that its rulings had been complied with was the practical effects. It indicated that "a national margin of appreciation should exist that allows the State to find the means to achieve the end established in a judgment." In this regard, it indicated that, in other cases where the Court has ordered the amendment of secondary legislation, such as *Olmedo Bustos v. Chile* and *Villagrán Morales et al. v. Guatemala*, "when examining compliance, [the Court] has abstained from ruling on the legislative mechanisms of the national organs and, pertinently, has merely assessed the practical effects of its judgments, and whether the expected result has been achieved." It also considered that the Court, "in no part [of the judgment] ordered or indicated that there was a mechanism that would result in the annulment of norms; it merely indicated that, using the specific mechanism of the [protection] proceedings it should be possible to question the

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<sup>6</sup> 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 Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, sixth considering paragraph.

constitutionality of laws or norms that regulate the right to be elected." Consequently, the Stated "ask[ed] that full compliance with the judgment should be declared."

11. The representatives indicated that the sixth operative paragraph reveals that "the purpose of this paragraph is [...] that, 'by means of a remedy, the citizens are truly guaranteed the ability to question the constitutionality of the legal regulation of the right to be elected.'" They indicated that, "both article [10.1.a)] and article [80.1.d)] of the Law [on the System of Mechanisms for Contesting Electoral Matters] prevent citizens who are not members of political parties from protecting their political right to be elected." In this regard, they argued that, in the Judgment, the Court had indicated that the said legislation was "contrary to the right to judicial protection" and, since the State has not amended it, it was failing to comply with the Judgment. In addition, they indicated that it was necessary to regulate satisfactorily "article 99 of the Constitution in order to include the authority of the [Electoral Tribunal] to declare the unconstitutionality of electoral laws in this specific case." The representatives indicated that the State "has created more obstacles" by adding "a new cause of inadmissibility [for electoral appeals] in [article 10.1.f)] of the Law," which signifies that "if a public entity [...] asserts the unconstitutionality of a law in general terms and the Supreme Court of Justice, without analyzing the specific case, determines that this law is compatible with the Constitution, the individuals affected in specific cases by that law can no longer avail themselves of any remedy to contest the violation caused to their rights." In addition, the representatives stressed that the 2011 reform of the Constitution, which specifies the obligation to interpret in keeping with the *pro persona* principle, "makes no changes as regards [what was previously established by] the legislation, because the *pro persona* principle was already recognized implicitly in [the] Constitution."

12. Furthermore, the representatives emphasized that "the [sixth] operative paragraph of the Judgment requires the enactment of legislative reforms and not the demonstration of supposed progress in jurisprudence." In this regard, they indicated that "the fact that some competent courts have examined the merits of the dispute does not guarantee the non-repetition of the human rights violations," because "the Mexican Federal Judiciary is far from being consistent on issues of such importance." In this regard, they underscored the current debate in the national Supreme Court of Justice on "whether or not there was a section of the Constitution where the human rights norms contained in the international treaties to which Mexico is a party could be found."

13. The Commission indicated that it appreciated the efforts made by the State to continue adapting its domestic law by means of legal reforms and that "the judicial authorities with competence in electoral matters had opted for an interpretation of a norm in keeping with the Convention and the decision of the Inter-American Court in its Judgment." However, it considered that the said efforts were insufficient, and that the information presented was not enough to conclude definitively that the reforms that had been made complied with the proposed objectives. In this regard, it considered that articles 10.1.a) and 80.d) of the General Law on the Mechanisms for Contesting Electoral Matters "should be [...] annulled." In addition, the Commission underlined "that if the Inter-American Court had found it sufficient to apply the mechanism of tacit derogation as the State [is claiming] [...], based on the general principles of the supremacy of the Constitution and that the subsequent law annuls [...] the previous one, it would not have ordered that the secondary legislation and the norms that regulate the protection proceedings be adapted to the constitutional reform."

14. The Commission emphasized that, "in the decisions in the cases forwarded by the State [...], it is true that an analysis was made of the merits of the issue raised without limiting the admissibility of the appeal owing to the fact that the individual had not been proposed by a political party." It also underlined that "it is essential that State comply with

the orders of the Inter-American Court in the terms established by the Court. In the instant case, the Inter-American Court ordered that the State continue to amend the legislation that was identified in the Judgment as being contrary to the right to judicial protection.” In addition, the Commission indicated that “if the Inter-American Court finds that it must assess the control of conformity with the Convention carried out by the judicial authorities as a way of complying with the decisions made in its judgment, sufficient information is required to prove, in terms of legal certainty, the existence of consolidated case law on the matter.” Regarding the latter, the Commission argued that “the information provided to date does not allow this conclusion to be reached, because it consists of a copy of a limited number of judicial rulings, without any information as to whether or not they constitute the universe of cases decided following the Court’s judgment, among other necessary explanations.

### *Considerations of the Court*

15. In its Judgment in this case, the Court concluded that, at the time of the facts, Mexico did not have an effective remedy that would enable those who were not proposed by political parties to question the legal regulation of the political right to be elected established in the Constitution and in the American Convention, owing to the inadmissibility of the remedy of *amparo* in electoral matters, the special nature of the action on unconstitutionality, and the inaccessibility and ineffectiveness of the protection proceedings to question the conformity of a law with the Constitution.<sup>7</sup> In this regard, after analyzing the provisions of articles 79.1<sup>8</sup> and 80.1.d)<sup>9</sup> of the General Law on the System of Mechanisms for Contesting Electoral Matters (hereinafter “Electoral Contestation Law”), the Court concluded that protection proceedings were inaccessible because, to be admissible, they required that the individual alleging the violation of his or her political right to be elected had to have been proposed by a political party.<sup>10</sup> Also, after analyzing article 10.1.a)<sup>11</sup> of the same law, the Court indicated that the protection proceedings were also ineffective because they were unable to question the constitutionality of a law.<sup>12</sup> Accordingly, when concluding that the State had violated Mr. Castañeda Gutman’s right to an effective remedy, the Court considered that the protection proceedings were problematic as regards their “accessibility” and their “effectiveness.”

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<sup>7</sup> Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 131.

<sup>8</sup> Article 79.1 of the Electoral Contestation Law established that “[t]he proceedings for the protection of politico-electoral rights shall only be admissible when the citizen, on his own behalf and individually, claims presumed violations of his right to vote and to be elected in popular elections, to associate individually and freely in order to take part peacefully in political affairs and to join political parties individually and freely.” Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 108.

<sup>9</sup> Article 80.1.d) of the Electoral Contestation Law provided that the action may be filed by the citizen when “[h]e considers that his politico-electoral right to be elected has been violated, [when] *having been proposed by a political party*, his registration as a candidate to elected office is unduly denied” (italics added). Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 109.

<sup>10</sup> Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 114.

<sup>11</sup> Article 10.1.a of the Electoral Contestation Law stipulates that the means of contestation, including the action for the protection of the politico-electoral rights of the citizen, “shall be inadmissible when the intention is to contest the unconstitutionality of local or federal laws.” Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 122.

<sup>12</sup> Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 131

16. Furthermore, in the said Judgment, the Court took note and assessed positively that, “a constitutional reform of several provisions of the Federal Constitutions was published in the official gazette of the Federation on November 13, 2007; they included article 99 which describes the attributes of the Electoral Tribunal of the Federal Judiciary.” In this regard, the State indicated that “following this reform, in addition to the attributes that the Electoral Tribunal already exercised in order to guarantee political rights, [...] this jurisdictional body and its regional chambers may expressly declare the non-applicability of legal provisions that are considered contrary to the Federal Constitution with specific effects, which also annuls the future effects of any opinion that the Supreme Court of Justice of the Nation may have issued on the matter.”<sup>13</sup> Based on the foregoing, in the Judgment this Court ordered the State to complete the adaptation of its domestic law to the Convention, within a reasonable time, so that it adapted the secondary legislation and the norms that regulate the proceedings for the protection of the rights of the citizen to the provisions of the constitutional reform of November 13, 2007, so that, using this remedy, citizens are effectively guaranteed the possibility of contesting the constitutionality of the legal regulation of the right to be elected (*supra* having seen paragraph 5).

17. In this regard, the Court notes that, by a decree of July 1, 2008,<sup>14</sup> the State amended the Electoral Contestation Law and the Organic Law of the Federal Judiciary (*infra* considering paragraphs 18 and 19), in order to include within the attributes of the Superior Chamber of the Electoral Tribunal of the Federal Judiciary (hereinafter “the Superior Chamber”) and the Regional Chambers of the Electoral Tribunal of the Federal Judiciary (hereinafter “Regional Chambers of the Electoral Tribunal”) the competence “[t]o decide [...], in specific cases, not to apply electoral laws that are contrary to the Constitution.”<sup>15</sup> Similarly, following this legislative reform, article 6.4 of the Electoral Contestation Law (concerning the common rules applicable to the contestation mechanisms) establishes that:

Notwithstanding the provisions of article 105 of the Constitution, the Chambers of the Electoral Tribunal of the Federal Judiciary, in exercise of their jurisdictional functions, may decide not to apply laws on electoral matters that are contrary to the Constitution. The decisions handed down in the exercise of this authority shall be limited to the specific case heard in the proceedings. In these cases, the Superior Chamber of the Electoral Tribunal shall advise the national Supreme Court of Justice.<sup>16</sup>

18. These changes amended the Electoral Contestation Law and the Organic Law of the Federal Judiciary in keeping with the provisions of the 2007 constitutional reform (*supra* considering paragraph 16), as ordered in the sixth operative paragraph of the Judgment.

19. The Court notes that also, in paragraph (f) of article 10, this amendment to the Electoral Contestation Law added as a cause for the dismissal of proceedings and the inadmissibility of the electoral contestation mechanisms, “[w]hen, in the contestation

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<sup>13</sup> Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 230.

<sup>14</sup> The Court notes that, even though this amendment occurred before the delivery of the Judgment, the Court was not informed of it at the merits and reparations stage of this case; hence the Court did not examine this amendment in its Judgment.

<sup>15</sup> Cf. Decree amending, adding to, and annulling various provisions of the Organic Law of the Federal Judiciary and of the General Law on the System of Mechanisms for Contesting Electoral Matters, published in the Official Gazette on July 1, 2008, art. 1 in which, *inter alia*, articles 189 and 195 of the Organic Law of the Federal Judiciary is amended (monitoring compliance file, tome I, folios 204, 207 and 209).

<sup>16</sup> Cf. Decree amending, adding to, and annulling various provisions of the Organic Law of the Federal Judiciary and of the General Law on the System of Mechanisms for Contesting Electoral Matters, published in the Official Gazette on July 1, 2008, art. 1 in which, *inter alia*, paragraph 4 is added to article 6 of the Electoral Contestation Law (monitoring compliance file, tome I, folios 213 and 214).

mechanism, a request is made, exclusively, not to apply a general electoral law that has been declared valid by the national Supreme Court of Justice, in the terms of paragraph II of article 105 of the Constitution.”<sup>17</sup> In this regard, the Court finds that the new cause of inadmissibility established in article 10.1.f) of the Electoral Contestation Law is not, *per se*, contrary to the measure of reparation ordered in the Judgment or to the American Convention, in the understanding that this norm will be applied and interpreted “so that the [protection proceedings] truly guarantee citizens the possibility of questioning whether the legal regulation of the right to be elected is in keeping with the Constitution [in a specific case].” The Court considers that this new cause of inadmissibility seeks to preserve the structure of judicial competences established by domestic law, as regards the control of the conformity of the laws with the Constitution; thus, in principle, it is reasonable in order to preserve the practical effects of the exclusive competence granted to the national Supreme Court of Justice (hereinafter “the Supreme Court”) to carry out a central control of constitutionality in the abstract. In addition, this Court notes that this legal provision was not examined in its Judgment, because it is a cause of inadmissibility that arose as a result of the new possibility granted to the electoral tribunals to examine the constitutionality of norms in specific cases, as ordered by this Court in the instant case (*supra* considering paragraphs 16, 17 and 18).

20. The Court also notes that the parties have provided various judicial decisions to the case file. They reveal that, currently, the limitations to the accessibility and effectiveness of the protection proceedings, based on which this Court declared the violation of the right to an effective remedy in its Judgment, are not being applied. In this regard, in two judgments of June 1, 2010, and June 15, 2011, the Superior Chamber examined the possibility of not applying a legal norm based on its alleged unconstitutionality in relation to the right to be elected.<sup>18</sup> Similarly, another three judgments provided ratify the authority of the Superior Chamber and the Regional Chambers of the Electoral Tribunal not to apply norms in a specific case because these are considered to be unconstitutional.<sup>19</sup> The State also mentioned 17 cases in which both the Superior Chamber and the Regional Chambers of the Electoral Tribunal have not applied, directly and indirectly, electoral laws contrary to the Constitution, and at least four of these refer to the right to be elected.<sup>20</sup> Furthermore, the representatives recognized that these “precedents indicated by the Mexican State reveal significant progress in [the Mexican] system of access to justice by citizens who have considered that their politico-electoral rights have been violated and, truly, it can be inferred from them that article 10 [...] of the Electoral Contestation Law] has not represented an obstacle to the exercise of the remedy, because the [Electoral Tribunal has] proceeded to exercise the powers that it has now been granted under article 99 of the Mexican Constitution, despite the provisions of article 10 [...] of the said law.” In this regard, the Court considers that these judicial decisions

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<sup>17</sup> Cf. Decree amending, adding to and annulling various provisions of the Organic Law of the Federal Judiciary and of the General Law on the System of Mechanisms for Contesting Electoral Matters, published in the Official Gazette on July 1, 2008, art. 2 in which, *inter alia*, paragraph (f) is added to article 10.1 of the Electoral Contestation Law (monitoring compliance file, tome I, folios 213 and 215).

<sup>18</sup> Cf. Judgment delivered by the Superior Chamber on June 1, 2010, in case SUP- JDC-132/2010 concerning Luis Manuel Pérez de Acha (file of evidence received during the private hearing on February 20, 2012, tome I, folios 1 and 44), and Judgment delivered by the Superior Chamber on June 15, 2011, in case SUP-JDC-4880/2011 concerning Marciano Javier Ramírez Trinidad (file of evidence received during the private hearing on February 20, 2012, tome I, folios 45 and 63).

<sup>19</sup> Cf. Judgment delivered by the Superior Chamber on June 27, 2012, in case SUP-JDC-1749/2012 concerning Gumesindo García Morelos (monitoring compliance file, tome II, folio 1070); Judgment delivered by the Superior Chamber on June 29, 2012, in case SUP-JDC-1774/2012 concerning Federico Jesús Reyes Heróles González Garza et al. (monitoring compliance file, tome II, folio 1036), and Judgment delivered by the Superior Chamber on August 26, 2011, in file SUP-JDC-574/2011 concerning Héctor Montoya Fernández (file of evidence received during the private hearing on February 20, 2012, tome I, folio 105).

<sup>20</sup> The State did not provide a copy of these decisions.



demonstrate that the legislative and constitutional reforms undertaken by the State are achieving the guarantee that there is an appropriate remedy to question the constitutionality of electoral laws in specific cases.<sup>21</sup>

21. In addition, with regard to the limitations verified in the Judgment in relation to the accessibility of the remedy (*supra* considering paragraph 15), this Court underscores that there is no evidence in the case file that, following notification of the Judgment, access to the protection proceedings has been restricted in the case of independent candidates who allege the violation of their right to be elected, in keeping with the provisions of the Judgment. To the contrary, from the information provided to the case file, the Court notes that in seven decisions issued between June 2009 and August 2011, the Superior Chamber and the Regional Chambers of the Electoral Tribunal did not consider that the condition of being an independent candidate was a reason for the inadmissibility of protection proceedings in which the violation of the right to be elected was alleged.<sup>22</sup> In this regard, this Court underlines that in a judgment delivered in the protection proceedings filed by Héctor Montoya Fernández on August 26, 2011, the Superior Chamber, carrying out a control of conformity with the Convention, decided that:

In this matter it is clear that the citizen requested his registration as an “independent candidate”; thus, no petition in this regard was presented by a national political party. This circumstance cannot be a valid justification for considering that the [protection] proceedings are inadmissible, because the essential issue is that the violation of the right to be a candidate for elected office is alleged, as corroborated by the text of the Constitution (article 99, section V), in which no material or substantial requirements are indicated for the admissibility of the contestation mechanism, except in the case of violations committed by political parties.<sup>23</sup>

22. The Court highlights that this current judicial practice reveals that, in specific cases, in which independent candidates have contested an infringement of their right to be elected, the

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<sup>21</sup> The Court notes that judgments were provided in which the Superior Chamber considered that article 10.1.a) was applicable, because what was sought was to question, in abstract, the constitutionality of various norms. In this regard, the Court notes that the measure of reparation does not include a State obligation to guarantee that, using protection proceedings, an abstract control of constitutionality is carried out; it therefore finds that the said decisions do not reveal a different criterion to the one indicated (*supra* considering paragraphs 18 and 20). *Cf.* Judgment delivered by the Regional Chamber of the Electoral Tribunal of the Federal Judiciary corresponding to the Fourth Plurinominal Circumscription on June 2, 2009, in case SDF-JDC-190/2009 concerning Elisa de Anda Madrazo and Antonio Carbia Gutiérrez (monitoring compliance file, tome I, folios 253, 285 and 286), and Judgment delivered by The Superior Chamber on December 23, 2009, in case SUP-JDC-3054/2009 concerning Horacio Culebro Borrayas (monitoring compliance file, tome II, folios 988, 991 and 992). The State also forwarded the Judgment delivered by the Superior Chamber on March 11, 2004, in case SUP-JDC-025/2004 concerning Jesús Gutiérrez Cuéllar. However, the said judgment was issued before the 2007 constitutional reform, so that this Court will not take it into account.

<sup>22</sup> *Cf.* Judgment delivered by the Regional Chamber of the Electoral Tribunal of the Federal Judiciary corresponding to the Fourth Plurinominal Circumscription on June 2, 2009, in case SDF-JDC-190/2009 concerning Elisa de Anda Madrazo and Antonio Carbia Gutiérrez (monitoring compliance file, tome I, folios 253 and 273); Judgment delivered by the Regional Chamber of the Electoral Tribunal of the Federal Judiciary corresponding to the Fourth Plurinominal Circumscription on June 2, 2009, in case SDF-JDC-192/2009 concerning Parménides Ortiz-Cano (monitoring compliance file, tome I, folios 289 and 291); Judgment delivered by the Superior Chamber on June 16, 2010, in case SUP-JDC-155/2010 concerning José Luis González Meza (monitoring compliance file, tome II, folios 995 and 997); Judgment delivered by the Superior Chamber on February 9, 2011, in case SUP-JDC-23/2011 concerning Hector Montoya Fernández Meza (monitoring compliance file, tome II, folios 967 and 971); Judgment delivered by the Superior Chamber on June 1, 2010, in case SUP- JDC 132/2010 concerning Luis Manuel Pérez de Acha (file of evidence received during the private hearing on February 20, 2012, tome I, folio 1); Judgment delivered by the Superior Chamber on June 15, 2011, in case SUP-JDC-4880/2011 concerning Marciano Javier Ramírez Trinidad (file of evidence received during the private hearing on February 20, 2012, tome I, folio 45), and Judgment delivered by the Superior Chamber on August 26, 2011, in case SUP-JDC 574/2011 concerning Héctor Montoya Fernández (file of evidence received during the private hearing on February 20, 2012, tome I, folios 71 and 87 to 91).

<sup>23</sup> *Cf.* Judgment delivered by the Superior Chamber on August 26, 2011, in case file SUP-JDC 574/2011 concerning Héctor Montoya Fernández (file of evidence received during the private hearing on February 20, 2012, tome I, folios 88 and 89).

cause for inadmissibility established in the Electoral Contestation Law to access the politico-electoral remedy examined in the Judgment has not been applied.<sup>24</sup>

23. This Court recalls that it has established that it is not only the elimination or enactment of norms of domestic law that guarantees the rights contained in the American Convention, pursuant to the obligation contained in Article 2 of this instrument. This also calls for the implementation of State practices resulting in the effective observance of the rights and freedoms recognized in the Convention. Consequently, the existence of a norm does not, in itself, guarantee that it will be applied adequately. The application of the norms or their interpretation, as jurisdictional practices and expressions of the legal system, must be adapted to the end sought by Article 2 of the Convention. In other words, the Court emphasizes that judges and organs for the administration of justice at all levels are obliged to exercise *ex officio* a control of conformity between domestic norms and the American Convention; evidently, within the framework of their respective spheres of competence and the corresponding procedural rules. In this task, they must take into account not only the international treaty concerned, but also its interpretation by the Inter-American Court, ultimate interpreter of the American Convention.<sup>25</sup>

24. In this regard, the Court recalls that, when monitoring compliance in the case of *Radilla Pacheco v. Mexico*, it took note of the constitutional reform of June 10, 2011, under which it was established in article 1 of the Mexican Constitution that “[h]uman rights norms shall be interpreted pursuant to the Constitution and the relevant international treaties, at all times providing the individual with the broadest protection.”<sup>26</sup> In this regard, this Court emphasizes the argument of the State that, “in parallel to the secondary legislation, the constitutional reform concerning human rights guarantees the prevalence of the practical effects of the Judgment” in this case, inasmuch as the said reform “results in the obligation of the electoral tribunals to interpret the politico-electoral rights of the citizen in keeping with the *pro persona* principle” and to carry out a control of conformity with the Convention *ex officio* in specific cases.

25. In addition, this Court has examined a “Decision of the Court in Plenary” issued by the Supreme Court on June 14, 2011, in case file “Various 912/2010.”<sup>27</sup> In this decision, the Supreme Court stated that the Judiciary was obliged to exercise a control of conformity of

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<sup>24</sup> The Court recalls that the relevant part of article 80.1.d) de la Electoral Contestation Law, establishes that protection proceedings may be filed by the citizen if “[h]e considers that his politico-electoral right to be elected has been violated, when, having been proposed by a political party, his registration as a candidate to an elected office is unduly denied.” Cf. Decree amending, adding to, and annulling various provisions of the Organic Law of the Federal Judiciary and of the General Law on the System of Mechanisms for Contesting Electoral Matters, published in the Official Gazette on July 1, 2008, art. 1 in which, *inter alia*, article 80 of the Electoral Contestation Law was amended (monitoring compliance file, tome I, folios 213 and 221).

<sup>25</sup> Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 124; *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 225; *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 222, para. 193, and *Case of Gelman v. Uruguay. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of March 20, 2013, sixty-sixth considering paragraph.

<sup>26</sup> Cf. *Case of Radilla Pacheco v. Mexico.* Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of May 14, 2013, fifth considering paragraph.

<sup>27</sup> In the private session held by the Justices on September 20, 2011, unanimously, by all 11 votes, the text of the addition to the case file “Various 912/2010” was approved. Available at: [http://fueromilitar.scjn.gob.mx/Resoluciones/Varios\\_912\\_2010.pdf](http://fueromilitar.scjn.gob.mx/Resoluciones/Varios_912_2010.pdf). Cf. *Case of Radilla Pacheco v. Mexico.* Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of May 14, 2013, fifth considering paragraph.

domestic norms with the American Convention *ex officio*, and that, to this end, it must take into account the framework of article 1 of the Mexican Constitution, which, since the 2011 reform, establishes the obligation to interpret human rights norms in keeping with the *pro persona* principle (*supra* considering paragraph 24). In addition, the said decision indicates that the rulings of the Inter-American Court with regard to Mexico “are binding for all the organs [of the State ...] within their respective spheres of competence [...]. Consequently, not only the specific operative paragraphs of the Judgment, but also all the criteria contained in the Judgment deciding this litigation are binding for the Judiciary. Moreover, it shall be considered that the remainder of the Inter-American Court’s case law, resulting from the judgments in cases in which the Mexican State was not a party, provide guidance for all the decisions of the Mexican judges, provided that this is more favorable to the individual.”<sup>28</sup>

26. The Court finds that requiring all members of the Judiciary to exercise control of conformity with the Convention *ex officio*, as well as considering that the judgments of the Inter-American Court with regard to Mexico are binding, reveal that, under domestic law, there is an obligation to guarantee the accessibility and effectiveness of the protection proceedings for those independent candidates who allege the violation of their right to be elected, as decided by this Court in its Judgment in this case.

27. Consequently, taking into account: (i) the implementation of the 2007 constitutional reform; (ii) the reform of the Electoral Contestation Law and of the Organic Law of the Federal Judiciary, which established by law the competence of the electoral tribunals to examine the constitutionality of the electoral norms in specific cases; (iii) the judicial precedents provided that reveal a judicial practice consequent with what was ordered in the Judgment as regards the need to guarantee the accessibility and effectiveness of the proceedings to protect the politico-electoral rights of independent candidates; (iv) the 2011 constitutional reform, which established the obligation to interpret provisions concerning human rights based on the *pro persona* principle, combined with (v) the interpretation of the Supreme Court in this regard, according to which domestic courts are obliged to carry out control of conformity with the Convention *ex officio* and to consider that this Court’s case law in cases involving Mexico is binding, as well as (vi) the principle of good faith in complying with international obligations (*supra* considering paragraph 4), this Court considers that Mexico has complied with the measure of reparation concerning the adaptation of its domestic law so that its citizens are effectively guaranteed the possibility of contesting the constitutionality of the legal regulation of the right to be elected.

### ***B. Other aspects related to compliance with the Judgment that the parties have reported to the Court***

28. In their briefs of May 7 and October 8, 2009, the representatives indicated that Mexico was failing to comply with the Judgment by maintaining in force article 73.VII of the Amparo Act,<sup>29</sup> so that this should be annulled. In this regard, the State indicated that “the obligation to adapt its legislation was delimited to the constitutional reforms that granted powers to the Electoral Tribunal of the Federal Judiciary [...] to declare that an electoral law is unconstitutional by means of the protection proceedings, and does not [...] mention the amendment of the norms that regulate the law on *amparo*.” The Commission did not submit observations in this regard.

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<sup>28</sup> Cf. *Case of Radilla Pacheco v. Mexico*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of May 14, 2013, fifth considering paragraph.

<sup>29</sup> On this point, the representatives provided as an attachment to their brief of October 8, 2009, a ruling of June 8, 2009, on an application for *amparo* filed by Marco Antonio Rascon Cordova. However, it is only partially legible.

29. The Court notes that, as mentioned by the State, the operative paragraph pending compliance only refers to the adaptation of the legislation relating to the protection proceedings (*supra* having seen paragraph 5). In this regard, the Court also recalls that the Judgment found that “it is not, in itself, incompatible with the Convention that a State limit the remedy of amparo to some matters, provided that it offers another similar remedy with the same scope for those human rights that are not heard by the judicial authorities by means of the *amparo*.”<sup>30</sup> Therefore, this Court considers that the request made by the representatives is not a matter to be examined when monitoring compliance with the Judgment.

30. In addition, in their brief of November 13, 2012, the representatives indicated that, in two decisions of June 2012, “the Electoral Tribunal had repeatedly stated that it was unable to exercise control of conformity with the Convention if the issue in question was to contest a norm contained in the Mexican Constitution.” In this regard, they indicated that this “reveals a failure to comply [with] the American Convention.” In this regard, the Court reiterates that the obligation included in the sixth operative paragraph of the Judgment only refers to “citizens [being] guaranteed effectively the possibility of contesting the constitutionality of the legal regulation of the right to be elected” (*supra* having seen paragraph 5). Therefore, this Court considers that the request made by the representatives is not a matter to be examined when monitoring compliance with the Judgment.

31. Lastly, the representatives asked that the Court “take into account the decision on the application for *amparo*” filed by Mr. Castañeda Gutman on January 9, 2012. The State indicated that “local decisions should not modify the Court’s assessment of compliance with its Judgment.” Despite this, the State considered that “the District Court [delivered] a ruling on aspects that do not correspond to the plaintiff’s claim and that were not even mentioned [...] in his initial brief.” In addition, the State emphasized that the ruling was “based on a supposed omission [to hand over some annexes] that occurred in April 2012, [which] had not been examined by the Court [...] and which [...] was remedied by the State in September [2012].” Furthermore, it stressed that “the *amparo* ruling concerned is not a final decision, since appeals have been filed against it which are pending a decision.” For its part, the Commission indicated that “although domestic decisions relating to compliance with the Court’s orders may be relevant in the context of the monitoring procedure, in this case the Commission observes that the said decision on *amparo* does not appear to have an impact on the analysis of the status of compliance with the only aspect of the Judgment that remains pending.”

32. This Court notes that, on January 9, 2012, Mr. Castañeda Gutman filed an application for *amparo* against the President of Mexico, the Minister of the Interior, the Minister for Foreign Affairs, the Vice Minister for Foreign Affairs of the Ministry of Foreign Affairs, and the Vice Minister for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs based on the alleged non-compliance with the sixth operative paragraph of the Judgment. On December 13, 2012, the First District Administrative Court in the Federal District indicated, *inter alia*, that the respective authorities “have not guaranteed the full enjoyment of the fundamental right to jurisdictional protection of the complainant, because, even though they have been required to forward the documentation that the Inter-American Court [...] considers necessary in order to be able to analyze the information and documents [relating to] monitoring compliance [...], the authorities [...] have abstained from taking the necessary steps to respond to this request fully and effectively.” Therefore, it decided “to grant the

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<sup>30</sup> Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 92.

*amparo* for the respective authorities to take the necessary steps [...] to respond promptly to the orders of the Inter-American Court [...], the purpose of which is for that jurisdictional organ to be able to examine all the information provided by the parties." Furthermore, the domestic ruling indicated that "these *amparo* proceedings which he has filed do not seek to analyze, review, assess or decide matters that are the exclusive competence of the Inter-American Court of Human Rights; and no decision will be taken in relation to the interpretation and scope of the judgment delivered in the *Case of Castañeda Gutman* [...], nor will a ruling be made with regard to compliance with the latter." The Court takes note of the decision on the application for *amparo* filed by Mr. Castañeda Gutman, as well as of the filing of an appeal for review against it, which will be decided by the Supreme Court. However, this Court finds that the said domestic decision does not affect the considerations of the Court in this Order on the status of compliance with the Judgment, taking into account the current status of this case.

**THEREFORE:**

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

in exercise of its authority to monitor compliance with its decision, pursuant to Articles 33, 62(1), 62(3), and 68(1) of the American Convention on Human Rights, 24 and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

**DECIDES:**

1. As indicated in considering paragraphs 15 to 27 of this Order, that the State has complied fully with its obligation to guarantee to its citizens the right to question the constitutionality of the legal regulation of the right to be elected, as established in the sixth operative paragraph of the Judgment.
2. To close the case of Castañeda Gutman, given that Mexico has complied with the provisions of the Judgment handed down by the Inter-American Court of Human Rights on August 6, 2008.
3. To communicate this Order to the General Assembly of the Organization of American States in the 2013 Annual Report of the Inter-American Court of Human Rights.
4. To require the Secretariat of the Court to notify this order to Mexico, the Inter-American Commission and the representatives of the victim.
5. To close the file of this case.

Diego García-Sayán  
President

Manuel Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary