

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

OF JULY 4, 2006

THE CASE OF EL AMPARO

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on merits delivered in *El Amparo v. Venezuela* by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of January 18, 1995.

2. The judgment on reparations delivered by the Court in this case on September 14, 1996.

3. The Order of the Court of November 28, 2002, on compliance with judgment in this case, in which it considered that the State of Venezuela (hereinafter "the State") "ha[d] paid the compensation due," but that "the interest owed because of the delay in paying the reparations was pending payment," and decided, *inter alia*:

[...]

2. That the State shall pay the next of kin of the victims and surviving victims the interest owed because of the delay in paying the reparations, which amounts to US\$28,751.44 (twenty-eight thousand seven hundred and fifty-one United States dollars and forty-four cents).

3. That the State shall submit to the Court by March 30, 2003, at the latest, a detailed report on the measures taken to comply with the ruling of the Court in [the]

[...] Order.

[...]

4. The notes of the Secretariat of the Inter-American Court (hereinafter "the Secretariat") of October 7 and December 19, 2003, in which it requested the State to send, as soon as possible, the report that it should have submitted by March 30, 2003 (*supra* note 3). It also requested the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") and the representatives of the victims and their next of kin (hereinafter "the representatives") to submit any information they possessed and deemed pertinent by February 23, 2004, at the latest.

5. The brief of the representatives of February 23, 2004, in which they stated that the State had "failed to comply with its obligation to investigate the facts and to

* Judge Oliver Jackman informed the Court that, for reasons beyond his control, he would be unable to attend the deliberation of this Order.

identify and punish those responsible" for the violations of the human rights of the victims in this case, and that "it had not complied" with the payment of the interest on arrears.

6. The brief of the Commission of February 24, 2004, in which it advised that "the State's failure to comply [...] with the elements established by the Court in its judgment of November 28, 2002, subsists" and requested that "the General Assembly of the Organization of American States should be informed about the non-compliance of the State, in accordance with Article 65 of the American Convention" on Human Rights (hereinafter "the Convention" or "the American Convention").

7. The report of the State of May 21, 2004, in which it indicated that:

(a) On May 21, 1997, the Permanent Council of War of San Cristóbal declared that "the formulation of financial charges against the soldiers allegedly involved in the fact was inadmissible," a decision that was ratified by the Court Martial on July 3, 1998. However, in its judgment, the Court Martial did not issue a ruling on the three soldiers allegedly involved. Subsequently, on June 30, 2000, the Superior Military Prosecutor's Office declared that the case files in this regard concerning these three soldiers should be filed; and

(b) As of March 23, 2004, the case was passed to the Prosecutor for the Transitory Procedural Regime of the Judicial Circuit of the state of Táchira, so that she could conduct the pertinent judicial investigations and take the relevant measures.

8. The observations of the Commission of August 2, 2004, in which it indicated that the information provided by the State had not contributed any new elements that would reveal that some progress had been made in the investigations to identify and punish those responsible for the facts that gave rise to this case, and did not correspond to the most current information on the judicial processing of the case in the Venezuelan jurisdiction.

9. The observations of the representatives of August 2, 2004, in which they indicated that:

(a) The information provided by the State was incomplete. The State had not advised that the case had been judicially closed owing to the confirmation of the judgment of the Court Martial by a decision of the Criminal Chamber of the Supreme Court of Justice of October 20, 1998, and that this ruling was final;

(b) It is possible to order the re-opening of the investigations in the ordinary jurisdiction, because "the police agents and soldiers who killed 14 fishermen and injured two others during the El Amparo massacre should not have been investigated and tried by military courts";

(c) The State has still not complied with the obligation to pay the amount owed to the surviving victims and to the next of kin of the other victims for interest on arrears in the payment of the compensation, and

- (d) The General Assembly of the Organization of American States should be informed of the State's failure to comply with the judgments of the Court, as established in Article 65 of the American Convention on Human Rights.

10. The note of the Secretariat of December 14, 2004, in which, on the instructions of the Court, it requested the State to submit, by February 15, 2005, at the latest, information on the reparations pending compliance and, specifically, detailed information on the measures taken by the Prosecutor for the Transitory Procedural Regime of the Judicial Circuit of the state of Táchira, concerning the "obstacles" that, in their observations, the representatives alleged could prevent the investigation and punishment of those responsible in this case.

11. The notes addressed to the State by the Secretariat on February 23, June 7 and July 7, 2005, reiterating the request that the State submit the information requested on December 14, 2004 (*supra* Having seen paragraph 10).

12. The brief of the State of August 22, 2005, and its attachments, advising that the pertinent procedures were being implemented for payment of the amount owed to the beneficiaries of the judgment delivered by the Court.

13. The note of the Secretariat of August 23, 2005, advising the State that it had failed to refer to the measure of reparation pending compliance: "to continue the investigations into the facts of the case and to punish those found responsible." It granted the State until September 12, 2005, to submit the required information.

14. The communication of the State of September 13, 2005, in which it asked the Court to "clarify the amount it should pay" for compensation and interest on arrears to the next of kin of the victims and to the surviving victims.

15. The note of the Secretariat of September 16, 2005, in which it reiterated to the State the request made in the note of August 23, 2005 (*supra* Having seen paragraph 13). It also asked the representatives and the Commission to present their observations on the State's communication of September 13, 2005 (*supra* Having seen paragraph 14).

16. The observations of the representatives of September 29, 2005, and the attachments, in which they indicated that the State should pay the interest on arrears and make the monetary adjustment on the amount of US\$28,751.44 (twenty-eight thousand seven hundred and fifty-one United States dollars and forty-four cents) from November 28, 2002, to the date on which the amount was effectively paid. They also indicated that the representatives and the State could "come to an agreement about updating the debt."

17. The observations of the Commission of October 13, 2005, in which, regarding the payment of pecuniary compensation and interest, it considered that, in the absence of a specific criterion founded on a ruling on this situation, "the Court should establish, on grounds of equity, a total amount to be paid, based on the amount originally owed of US\$28,751.44, increased by an amount that, on grounds of equity, it assesses to be adequate reparation for the damage caused to the injured party because they did not have this amount at their disposal." Regarding the obligation to investigate, the Commission reiterated its conclusions of August 2004 (*supra* Having seen paragraph 8) and requested the Court to require the State to provide specific information about the measures taken to comply with the judgment and that it

should “express its political willingness to allow the investigations to be re-opened, granting the civil jurisdiction the authority to conduct the proceedings to determine responsibilities and establish the corresponding penalties.”

18. The note of the Secretariat of October 14, 2005, in which it requested the State to submit, by November 14, 2005, at the latest, any observations it deemed pertinent on the communication of the Commission (*supra* Having seen paragraph 17), and on the brief of the representatives (*supra* Having seen paragraph 16), and reiterated the request that it submit information on the measure of reparation pending compliance: “to continue the investigations into the facts of this case and to punish those found responsible.”

19. The report of the State of November 8, 2005, in which it indicated that:

- (a) “The State would make all the calculations and estimates to establish with exactitude the amount owed for compensation and interest on arrears [...], up until November 15, 2005,” in order to make the agreed payments, and
- (b) The Attorney General’s Office (*Ministerio Público*) had commissioned the Forty-ninth Prosecutor “to hear [the case] together with the Prosecutor from the Attorney General’s Office for the Transitory Procedural Regime of the state of Táchira,” [...] to uncover new elements of significance for the case.”

20. The communication of the representatives of December 20, 2005, in which they indicated that:

- (a) On December 2, 2005, the State had paid the sum of US\$37,731.20 (thirty-seven thousand seven hundred and thirty-one United States dollars and twenty cents). The “payment was made to 33 of the 40 beneficiaries who had received the payment of compensation in 1998. Four members of the family of Julio Pastor Ceballos did not attend the two meetings that were convened to this end. Four people had died in the time between the payment of the compensation and the payment of the interest on arrears [...]. The heirs of the four people who had died were paid the quota [...] corresponding to each of the deceased”;
- (b) The State “had made an effort to convene the beneficiaries to two meetings to make the payment. Notice of the meetings had been published in different regional newspapers and in a newspaper with national circulation, as well as being broadcast by radio;
- (c) The “amount corresponding to each person who did not attend the meetings was deposited in a bank account where it will remain available until those persons communicate with the bank”;
- (d) “Having complied with the obligation to pay the interest on arrears, the State of Venezuela has complied with one of the decisions of the judgment on reparations,” and
- (e) The State continued to fail to comply with its obligation to investigate, to determine responsibilities, and to punish the masterminds and perpetrators of the massacre.

21. The brief of the Commission of December 21, 2005, in which it indicated that:

- (a) "It appreciated the State's compliance with the obligation to pay the interest on arrears and, consequently, found that the State has complied with its obligation regarding one of the decisions of the judgment on reparations";
- (b) "The State has not complied with its obligation to conduct an effective investigation to identify and punish those responsible for the facts, 17 years after the massacre occurred," and
- (c) "It reiterates the position expressed in its brief of October 13, 2005 (*supra* Having seen paragraph 17), in which it requested the Court to require the State to take concrete actions to allow the investigations to be re-opened, granting the civil jurisdiction authority to conduct proceedings to determine responsibilities and establish the corresponding sanctions."

22. The note of the Secretariat of January 23, 2006, in which it requested the State to forward, by January 31, 2006, at the latest, appropriate vouchers authenticating the payment made by the State to the victims or to their next of kin, in compliance with the judgment on reparations delivered by the Court in this case.

23. The communication of the State of January 27, 2006, and its attachments, with which it forwarded copy of Judicial Inspection No. 473-05 "made by the Civil, Mercantile, Agrarian, Transit and Banking Court of First Instance of the Judicial Circuit of the state of Apure-Guasdalito on November 30, 2005, certifying the cancellation procedure carried out by the Venezuelan State" to the [successors] and survivors of the tragedy [of El] Amparo, for interest on arrears [...], recording all those who received the respective payment. Also, on the instructions of the President of the Court, the State was requested to forward, by February 17, 2006, at the latest, information authenticating the payment that corresponded to each of the beneficiaries who did not attend the said procedure.

24. The communication of the State of February 6, 2006, and its attachments, with which it forwarded copies of "the final settlement certificates" signed by the beneficiaries of the payments.

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. That the State of Venezuela has been a State Party to the American Convention since August 9, 1977, and accepted the compulsory jurisdiction of the Court on June 24, 1981.
3. That 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 the implementation at the domestic level of the rulings of the Court in its decisions.¹

¹ Cf. *Case of the Constitutional Court*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 7, 2006, third considering paragraph; *Case of the 19 Tradesmen*.

4. That, in view of the final and unappealable character of the judgments of the Court, as established in Article 67 of the American Convention, the State should comply with them fully and promptly.

5. That the obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.

6. That 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 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.³

7. That the States Parties to the American Convention that have accepted the compulsory jurisdiction of the Court must comply with the obligations established by the Court. In this regard, Venezuela must adopt all necessary measures to comply effectively with the rulings of the Court in the judgments of January 18, 1995 (*supra* Having seen paragraph 1) and September 14, 1996 (*supra* Having seen paragraph 2).

8. That, while monitoring full compliance with the judgments on merits and reparations delivered in this case, and having examined the information provided by the parties, the Court has observed that the State has made several payments of interest on arrears (*supra* Having seen paragraphs 24 and 25).

9. That the representatives and the Commission have expressed their satisfaction for the payments made by the State in favor of the beneficiaries of the reparations ordered by the Court, and consider that the State has complied with this element of the judgments of the Court (*supra* Having seen paragraphs 21 and 22).

Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, third considering paragraph and *Case of Ricardo Canese*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, third considering paragraph.

² Cf. *Case of the Constitutional Court*. Compliance with judgment, *supra* note 1, fifth considering paragraph; *Case of the 19 Tradesmen*. Compliance with judgment, *supra* note 1, fifth considering paragraph, and *Case of Ricardo Canese*. Compliance with judgment, *supra* note 1, fifth considering paragraph.

³ Cf. *Case of the Constitutional Court*. Compliance with judgment, *supra* note 1, sixth considering paragraph; *Case of the 19 Tradesmen*. Compliance with judgment, *supra* note 1, sixth considering paragraph; *Case of Ricardo Canese*. Compliance with judgment, *supra* note 1, sixth considering paragraph.

10. That, according to the information forwarded by the representatives (*supra* Having seen paragraph 21), four members of the family of Julio Pastor Ceballos did not attend the two meetings convened to make the payment, so that the "amount corresponding to each person who did not attend was deposited in a bank account where it will remain available until those persons communicate with the bank." Also, the representatives indicated that the State had "had made an effort to convene the beneficiaries to two meetings to make the payment. Notice of the meetings had been published in different regional newspapers and in a newspaper with national circulation, as well as being broadcast by radio."

11. That, pursuant to the case law and consistent practice of the Court, if, for reasons that can be attributed to the beneficiaries of the compensation, they are unable to receive it within the time indicated by the Court, the State shall deposit such amounts in favor of the beneficiaries in an account or deposit certificate in a solvent Venezuelan financial institution, under the most favorable financial conditions permitted by law and banking practice. If, after ten years, the compensation has not been claimed, the amounts shall be returned to the State with the interest accrued.

12. That the representatives indicated that four beneficiaries of the judgment on reparations in this case had died in the time between the payment of the compensation and the payment of the interest on arrears, so that this payment was made to their heirs.

13. That, pursuant to the case law and consistent practice of the Court, the amount corresponding to the beneficiaries of compensation who die before it is delivered to them shall be shared out in accordance with domestic law.⁴

14. That, with regard to the obligation to investigate and punish the persons responsible for the human rights violations committed in this case, the representatives and the Commission have considered that the State has not complied with conducting a satisfactory investigation, because it has not shown that any real progress has been made in this regard. The representatives indicated that the case was closed judicially owing to the confirmation of the judgment of the Court Martial by a ruling of the Criminal Chamber of the Supreme Court of Justice of October 20, 1998. The State advised that the Attorney General's Office had commissioned the Forty-ninth Prosecutor "to hear [the case]] together with the Prosecutor from the Attorney General's Office for the Transitory Procedural Regime of the state of Táchira," [...] in order to uncover new elements of significance for the case.

15. The Court finds that, from the information provided, there is no evidence that the State has made any significant progress in complying with the obligation to investigate and punish those responsible.

⁴ Cf. *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para. 211; *the case of Acevedo et al.* Judgment of February 7, 2006. Series C No. 144, para. 305, and *López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 203.

16. That, as the Court has indicated in its case law,⁵ no law or provision of domestic law – including amnesty laws and the statute of limitations – can prevent a State from complying with the requirement of the Court that it investigate and punish those responsible for grave human rights violations. In particular, amnesty provisions, rules concerning the statute of limitations, and the establishment of factors that exclude responsibility intended to impede the investigation and punishment of those responsible for grave human rights violations, are inadmissible, because such violations are contrary to non-derogable rights recognized by international human rights law.

17. That, since the State has not complied with this aspect, the Court will continue to monitor compliance with the judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with 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 29(2) of its Rules of Procedure,

DECLARES:

1. That the State has complied fully with the payment of interest on arrears in this case.
2. That, if the next of kin of Julio Pastor Ceballos do not claim the amounts deposited in their favor in the corresponding financial institution within ten years, the amounts shall be returned to the State with the accrued interest .
3. That it will continue to monitor compliance with the aspect pending fulfillment in this case, which is: to continue investigating the facts of this case and to punish those who are found responsible.

AND DECIDES:

1. To require the State to adopt the necessary measures to comply promptly and effectively with the aspect pending compliance, which the Court ordered in the judgment on reparations of September 14, 1996, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit a detailed report by October 2, 2006, at the latest, indicating the status of compliance with the said aspect that is pending fulfillment.
3. To request the Inter-American Commission on Human Rights and the representatives of the victims and their next of kin to submit their observations on

⁵ Cf. *Case of Baldeón García*, *supra* note 4, para. 201; *Case of Blanco Romero et al.* Judgment of November 28, 2005. Series C No. 138, para. 98, and *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, para. 140.

the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

4. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims and their next of kin.

Sergio García Ramírez
President

Alirio Abreu Burelli

Antônio A. Cançado Trindade

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary