

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

CASE OF BAYARRI v. ARGENTINA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on Preliminary Objection, Merits, Reparations and Costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on October 30, 2008, in this case.

2. The Order of November 22, 2010, issued by the Court, in which, *inter alia*, it declared that:

[...]

2. [...] the State has complied partially with the following operative paragraphs of the Judgment:

a) To provide, free of charge, immediately and for the time necessary, the medical treatment required by Juan Carlos Bayarri (*Operative Paragraph 9 of the Judgment*), and

b) To ensure the immediate removal of the name of Juan Carlos Bayarri from all public records in which he appears with a criminal record (*Operative Paragraph 12 of the Judgment*).

3. [...] the following operative paragraphs of the Judgment remain pending compliance:

a) To conclude the criminal proceedings opened regarding the facts that gave rise to the violations in this case, and to decide them in accordance with the law (*Operative Paragraph 10 of the Judgment*), and

b) To incorporate, insofar as it has not yet done so, members of the security forces, the investigation agencies and the organs of the administration of justice into the training and dissemination activities on the prevention of torture and cruel, inhuman or degrading treatment or punishment (*Operative Paragraph 13 of the Judgment*).

4. It will keep open the proceeding of monitoring compliance with regard to the pending aspects indicated in Declarative paragraphs 2 and 3.

3. The brief of April 6, 2011, in which the Republic of Argentina (hereinafter "the State" or "Argentina") provided information on the status of compliance with the Judgment delivered in this case (*supra* Having Seen paragraph 1).

4. The brief of May 31, 2011, in which the representatives presented their observations on the report forwarded by the State (*supra* Having Seen paragraph 3).

* Judge Leonardo Franco, an Argentine national, recused himself from hearing the proceeding for monitoring compliance in this case, in accordance with Articles 19 of the Court's Statute and 21 of its Rules of Procedure, approved at its Eighty-fifth Regular Session held from November 16 to 28, 2009, and the Court accepted his recusal.

5. The communication of June 9, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented its observations to the report forwarded by the State (*supra* Having Seen paragraph 3).

6. The notes of the Secretariat of the Court of March 12 and May 24, 2012, reminding the State that, according to the Operative Paragraph 6 of the Order of November 22, 2010 (*supra* Having Seen paragraph 2), the State must submit a report on compliance with the measures of reparation that are still pending, and that the State's last report had been presented on April 6, 2011. Consequently, on the instructions of the President of the Court, the State was requested to submit a new report on the measures adopted to comply with the pending reparations as soon as possible, in accordance with said Order.

CONSIDERING THAT:

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

2. Argentina has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 5, 1984, and recognized the contentious jurisdiction of the Court on that date. On March 31, 1989, Argentina ratified the Inter-American Convention to Prevent and Punish Torture (hereinafter "the Convention against Torture" or "the ICPPT").

3. According to the provisions of Article 67 of the American Convention, the State must comply fully and promptly with the judgments of the Court. 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 at the domestic level of the Court's decisions in its judgments.¹

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 abide by a treaty. The treaty obligations of the States Parties are binding for all the powers and organs of the State.²

5. 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 applies not only to the substantive provisions of human rights treaties (i.e. those addressing protected rights), but also to procedural provisions, such as those referring to compliance with the Court's decisions. These obligations should be interpreted and applied so that the protected guarantee is

¹ Cf. *Case of Baena Ricardo et al. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Kawas Fernández v. Honduras. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 27, 2012, Considering paragraph 2.

² 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 Caballero Delgado and Santana v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 27 2012, Considering paragraph 5.

truly practical and effective, bearing in mind the special nature of human rights treaties.³

6. The States Parties to the Convention that have accepted the Court's binding jurisdiction have a duty to comply with the obligations established by the Court. This includes the State's obligation to inform the Court of the measures adopted to comply with the Court's rulings in its judgments. The State's prompt observance of its obligation to report to the Court on how it is complying with each of the measures ordered is essential for evaluating the status of compliance with the Judgment as a whole.⁴

A. Adoption of such measures as are necessary to comply fully and promptly with aspects of the Judgment pending compliance and the obligation to report to the Court

7. In the Order of November 22, 2010 (*supra* Having Seen paragraph 2), the Court ordered the State to present, every three months, a report on compliance with the measures of reparation that are still pending. The only report presented by the State is dated April 6, 2011, even though subsequently, on the instructions of the President, the Secretariat of the Court twice requested the State to present another report (*supra* Having Seen paragraph 6), given that the information available to the Court at this time does not allow it to adequately verify the level of compliance with the measures of reparation that remain pending. In this regard, it should be emphasized that, in the report of April 6, 2011, the State did not provide information about the medical treatment provided to Juan Carlos Bayarri (*supra* Having Seen paragraph 2), ordered in Operative Paragraph 9 of the Judgment.

8. In order to monitor and ensure the implementation of the measures of reparation ordered, this Court must be able to receive information on and verify the execution of the Judgment.⁵ In this case, the State is not fulfilling its treaty-based obligation to inform the Court regarding the way in which it is implementing the measures of reparation pending compliance (*supra* Considering paragraph 6).

9. In view of the foregoing, and given that the Court does not have sufficient information to be able to monitor full compliance with the Judgment, it is necessary that the State provide timely and detailed information on all the measures adopted to date with regard to the reparations pending compliance. The Court keeps open the possibility that it may opportunely summon the parties to a hearing to assess compliance with the Judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

⁴ Cf. *Case of Barrios Altos v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering paragraph 7, and *Case of Kawas Fernández Vs. Honduras*, *supra* note 1, Considering paragraph 3.

⁵ Cf. *Case of Neira Alegria et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 19, 2009, Considering paragraph 20; *Case of Castillo Páez v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 19, 2011, Considering paragraph 10.

in exercise of its authority to monitor compliance with its decisions and 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) of its Rules of Procedure,

DECLARES THAT:

1. In accordance with Considering paragraphs 7 to 9 of this Order, the State is not fulfilling its obligation to inform the Inter-American Court of Human Rights about the measures adopted to comply with the provisions of the Judgment on Preliminary Objection, Merits, Reparations and Costs delivered on October 30, 2008.

2. It will keep open the proceeding of monitoring compliance in relation to the following obligations:

a) To provide, free of charge, immediately, and for the time necessary, the medical treatment required by Juan Carlos Bayarri (*Operative Paragraph 9 of the Judgment*), and

b) To ensure the immediate removal of the name of Juan Carlos Bayarri from all public records where he appears with a criminal record (*Operative Paragraph 12 of the Judgment*).

c) To conclude the criminal proceedings opened regarding the facts that gave rise to the violations in this case, and to decide them in accordance with the law (*Operative Paragraph 10 of the Judgment*), and

d) To incorporate, insofar as it has not yet done so, members of the security forces, the investigation agencies, and the organs of the administration of justice into the training and dissemination activities on the prevention of torture and cruel, inhuman or degrading treatment or punishment (*Operative Paragraph 13 of the Judgment*).

AND DECIDES:

1. To require the Republic of Argentina to adopt all necessary measures to comply fully and promptly with the obligations indicated in Declarative paragraph 2 of this Order, as stipulated in Article 68(1) of the American Convention on Human Rights.

2. To request the Republic of Argentina to present to the Inter-American Court of Human Rights, no later than October 3, 2012, a report indicating all the measures adopted to comply with the aspects that are pending, in accordance with Considering paragraphs 7 to 9 of this Order. Subsequently, the State shall continue reporting to the Court every three months.

3. To request the representatives of the victim and the Inter-American Commission on Human Rights to present any observations they deem pertinent on the reports of the Republic of Argentina, mentioned in Operative paragraphs 2 and 3, within four and six weeks, respectively, of receiving said reports.

4. To continue monitoring compliance with the Judgment on Preliminary Objection, Merits, Reparations and Costs of October 30, 2008.

5. To require the Secretariat of the Court to notify this Order to the Republic of

Argentina, the Inter-American Commission on Human Rights and the representatives of the victim.

Diego García-Sayán
President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary