

Order of the
Inter-American Court of Human Rights
of November 17, 2004
Case of Bulacio v. Argentina
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on the merits, reparations, and costs delivered by the Inter-American Court of Human Rights (hereinafter the "Court", or the "Inter-American Court") of September 18, 2003, in which the Court:

DECID[ED]:

[...]

1. to admit the State's recognition of international responsibility.
2. to approve, in the terms of this judgment on the merits and certain aspects of reparations, the February 26, 2003, agreement and its March 6, 2003, clarification document, signed in both cases by the State, the Inter-American Commission on Human Rights and the next of kin of the victim and their legal representatives.

DECLARE[D] THAT:

3. pursuant to the terms of the State's recognition of international responsibility, the latter violated the rights enshrined in Articles 4, 5, 7 and 19 of the American Convention on Human Rights to the detriment of Walter David Bulacio, and the rights enshrined in Articles 8 and 25 also of the American Convention on Human Rights, to the detriment of Walter David Bulacio and his relatives, all in relation to Articles 1(1) and 2 of the American Convention on Human Rights [...].

AND DECID[ED] THAT:

4. the State must pursue and conclude the investigation of all the facts of the case and punish those responsible for them; that the next of kin of the victim should be afforded full access and the capacity to act during all stages and at all levels of said investigations according to domestic law and the rules of the American Convention on Human Rights; and that the results of the investigations must be publicly disseminated [...].

5. the State must, by adopting the legislative and any other measures required to adjust the domestic legislation to international human rights rules and give them full force pursuant to Article 2 of the American Convention on Human Rights, ensure that events such as those that gave rise to the instant case not occur again [...].

6. the State must publish Chapter VI and the operative part of the judgment one time only in the official gazette [...].

7. the State must pay the total sum of US\$124,000.00 (one hundred twenty four thousand U.S. dollars) or its equivalent in Argentine currency as compensation for material damages, distributed as follows:

- a) the sum of US\$110,000.00 (one hundred ten thousand U.S. dollars) or its equivalent in Argentine currency to be paid to Ms. Graciela Rosa Scavone [...]; and

- b) the sum of US\$14,000.00 (fourteen thousand U.S. dollars) or its equivalent in Argentine currency to be distributed in equal amounts among Ms. María Ramona Armas-de-Bulacio and Ms. Lorena Beatriz Bulacio [...].

8. The State must pay the total sum of US\$210,000.00 (two hundred ten thousand U.S. dollars) or its equivalent in Argentine currency, as compensation for material damages, distributed as follows:

- a) the sum of US\$114,333.00 (one hundred fourteen thousand three hundred thirty-three U. S. dollars), or its equivalent in Argentine currency, to be paid to Ms. Graciela Rosa Scavone [...];
- b) the sum of US\$114,333.00 (one hundred fourteen thousand three hundred thirty-three U. S. dollars), or its equivalent in Argentine currency, to be paid to Ms. María Ramona Armas-de-Bulacio [...];
- c) the sum of US\$39,333.00 (thirty-nine thousand three hundred thirty-three U.S. dollars), or its equivalent in Argentine currency, to be paid to Ms. Lorena Beatriz Bulacio [...]; and
- d) the sum of US\$12,000.00 (twelve thousand U.S. dollars), or its equivalent in Argentine currency to be distributed in equal amounts among the children, Matías Emanuel and Tamara Florencia Bulacio [...].

9. the State must pay the sum of US\$40,000.00 (forty thousand U.S. dollars), or its equivalent in Argentine currency for costs and expenditures [...].

10. the State must pay such compensation and reimburse such costs and expenditures as ordered in the [...] Judgment within six months from the notification thereof.

11. the compensation for material damages, immaterial damages and costs and expenditures established in this Judgment may not be subject to any tax, levy or surcharge currently imposed or which may be decreed in the future.

12. in the event of delinquency on the part of the State, it shall be subject to the payment of interest on the amount due, which shall correspond to the delinquency interest rate applied by banks in Argentina.

13. [concerning]the compensation ordered in favor of the children, Tamara Florencia and Matías Emanuel Bulacio, the State must, within six months and under the most favorable financial conditions allowed by the legislation and banking practice, invest the sums owed them in a solvent Argentine banking institution, in U.S. dollars or the equivalent thereof in Argentine currency, for as long as they are under age [...].

14. it shall supervise compliance with judgment and shall regard the case closed [...] once the State will have properly complied with the requirements of the [...] judgment. Within six months from notification of the Judgment the State shall submit to the Court a report on the measures taken in compliance [...].

2. The note of the Court's Secretariat (hereinafter the "Secretariat"), of April 6, 2004, requesting the State of the Argentine Republic (hereinafter the "State" or "Argentina") the submission of its first compliance with judgment report, given that the deadline for its submission had already expired on April 3.

3. The compliance with judgment report (*supra* Having seen 1) submitted by the State on May 13, 2004, which included a copy of the publication in the official gazette of the pertinent section of the Judgment delivered by the Court (*supra* Having seen 1) and "certifications that the payments [...] ordered [in operative paragraphs seven to thirteen] ha[d] been made." In like manner, the State referred to the steps taken to comply with operative paragraphs four and five of said Judgment (*supra* Having seen 1).

4. The Secretariat's notes of May 25, 2004, by means of which it transmitted the State's report to the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "Inter-American Commission") and to the representatives of the victim and his next of kin (hereinafter the "representatives") and, following instructions from the President of the Court (hereinafter the "President"), granted them until June 25, 2004, for the submission of such observations to the cited State's report as they deemed pertinent.

5. The observations to the State's report (*supra* Having seen 3) submitted by the Inter-American Commission on June 25, 2004, where it indicated that the State "sent a copy of the December 17, 2003, issue of the official gazette where the relevant sections of the [judgment of the Inter-American Court] were published in the manner ordered," and "submitted a number of certifications relative to the payment of compensation for material damages, immaterial damages, costs and expenditures which, in the Commission's opinion, proves its compliance with operative paragraphs 7 to 13 of the Judgment." The Commission likewise observed, in relation to the fourth operative paragraph of the September 18, 2003, Judgment (*supra* Having seen 1), that: a) the investigation's procedural status has not changed since 1996, and that the State has not provided information on "specific measures adopted to advance it;" b) the representatives continue to be separated from the judicial proceedings since their status as a party to the case has not been re-established, despite the fact that on October 10, 2003, they submitted a request to that effect; c) the Supreme Court was considering a special remedy against a decision of Section Six of the Penal Chamber, which declared expiration of the penal proceedings, concerning which the Court's General Prosecutor issued a favorable opinion on December 18, 2003; and d) on April 21, 2004 the Administrative Investigations Prosecutor requested the Argentine Federal Police to reopen the police summary proceedings against police chief (R) Miguel Angel Espósito; however, "no progress has been made in the investigation on this matter." On the other hand, in relation to operative paragraph five of the Judgment (*supra* Having seen 1), the Commission expressed that: a) the information provided by the State reflects initiatives of a very preliminary and partial nature; b) other subjects, apart from the procedural and penal system applicable to underage individuals and detention conditions were dealt with in the case; and c) to accomplish an adjustment of the domestic legal system in the terms ordered by the Court, a comprehensive revision and evaluation, as well as modification actions, are required. Lastly, the Commission asked the Court to require the State to report "which the timetable is or the foreseen deadlines are, to put into effect the measures proposed by the Executive Branch, which are still being studied," and to continue supervising compliance with judgment.

6. The observations to the State's report (*supra* Having seen 3) submitted by the representatives on June 25, 2004, where they highlighted "the **payment of compensation within the time limit** [for] material and immaterial damages [for] costs and expenditures – such payments having been made in conformity with the provisions of the judgment of September 18 last; and **the publication of the judgment** in the terms ordered by the [...] Court" (highlighting from the original). Concerning the rest of the measures ordered, the representatives expressed that "compliance therewith is at least 'incomplete' [and the] procedures [pointed out by the State] are not at all sufficient to comply with the measures related to the need for 'adjustment and modernisation of domestic law [...]'; or with the measures related to the investigation and punishment of those responsible for human rights violations in the instant case." In like manner, the representatives asked the Court to continue supervising compliance with judgment.

CONSIDERING:

1. That inherently the attribution to supervise compliance with its orders is part of the Court's jurisdictional functions.
2. That Argentina has been a State Party to the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention") since September 5, 1984, and recognized the Court's contentious jurisdiction on the same day.
3. That Article 68(1) of the American Convention states 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 national level of the Court's decisions in its judgments.¹
4. That by virtue of the nature of the Court's judgments as final and not subject to appeal, as established in Article 67 of the American Convention, the State must promptly and totally comply with them and within the term established to such effect.
5. That the obligation to comply with the orders of the Court corresponds to a basic principle concerning international State responsibility that is supported by international case law, according to which the States must undertake their conventional international obligations in good faith (*pacta sunt servanda*) and, as already pointed out by this Court and established by Article 27 of the 1969 Vienna Convention on the Law of Treaties, they may not invoke the provisions of their internal law as justification for failure to comply with their already established international responsibility.² The conventional obligations of the States Parties are binding to all branches and organs of the States.
6. That the States Parties to the Convention must ensure compliance with conventional provisions and their own effects (*effet utile*) at the level of their respective domestic legislations. This principle applies not only in relation to substantive provisions of human rights treaties (that is, those that contain provisions

¹ Cf. *Case of Baena-Ricardo et al.. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131.

² Cf. *Matters of: Lilliana Ortega et al., Luisiana Rios et al., Luis Uzcátegui, Marta Colomina and Lilliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of May 4, 2004, considering paragraph seven; *Case of Baena-Ricardo et al. Competence*, *supra* note 1, para. 128; and *Case of Barrios Altos*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 28, 2003, considering paragraph six.

on protected rights), but also in relation to procedural rules such as those that refer to compliance with orders of the Court. These obligations must be interpreted and applied in such a way that the guarantee being thus protected be actually practical and effective, bearing in mind the special nature of human rights treaties.³

7. That States Parties to the Convention that have recognized the Court's contentious jurisdiction must comply with the obligations established by the Court. In this sense, the State must inform about measures adopted towards compliance with the orders contained in decisions of the Court. The timely observance of the State's obligation to inform the Court on how it is complying with each of its orders is basic to assess the status of compliance with the Judgment as a whole.

*
* * *

8. That in supervising overall compliance with the Judgment on the merits, reparations and costs delivered in the instant case, and after analysing the information provided by the State, the Inter-American Commission, and the representatives of the victim and his next of kin in their briefs on compliance with reparations (*supra* Having seen 3, 5 y 6), the Court has corroborated that the State has complied with the requirement in operative paragraph six of said Judgment (*supra* Having seen 1), as to publication of Chapter VI and the operative part of the Judgment in the official gazette.

9. That it has been likewise corroborated that the State has paid compensation for material damages, immaterial damages and costs and expenditures as ordered by the Court in conformity with operative paragraphs seven to thirteen of the Judgment delivered on September 18, 2003 (*supra* Having seen 1).

10. That after having analysed the documents submitted by the State, the Inter-American Commission, and the representatives of the victim and his next of kin, the Court warns that it does not have sufficient information on the following aspects of the case not yet complied with:

- a) investigation of all the facts in the case and punishment of those responsible, with full access and capacity to act for the next of kin of the victim, the results of which must be publicly disseminated (*operative paragraph four of the September 18, 2003, Judgment*); and
- b) process of adoption of legislative and any other measures required to adjust the domestic legislation to international human rights rules and to make them fully effective, in assurance that facts such as those

³ Cf. *Case of Baena-Ricardo et al. Competence*, *supra* note 1, para. 66; *Case of Constantine et al. Preliminary Objections*. Judgment of September 01, 2001. Series C No. 82, para. 74; *Case of Benjamin et al.* Judgment of September 1, 2001. Series C No. 81, para. 74; *Case of Hilaire. Preliminary Objections*. Judgment of September 1, 2001. Series C No. 80, para. 83; *Case of the Constitutional Court. Competence*. Judgment of September 24, 1999. Series C No. 55, para. 36; and *Case of Ivcher-Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37. Likewise, *cf., inter alia*, *Case of the "Juvenile Reeducation Institution."* Judgment of September 2, 2004. Series C No. 112, para. 205; *Case of the Gómez-Paquiyaui brothers*. Judgment of July 8, 2004. Series C No. 110, paragraphs 150 and 151; and *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 142.

In this same sense, *cf. E. Court H.R., Klass and others v. Germany, (Merits) Judgment of 6 September 1978, Series A no. 28, para. 34; and Permanent Court of Arbitration, Dutch-Portuguese Boundaries on the Island of Timor, Arbitral Award of June 25, 1914.*

dealt with in the instant case not occur again (*operative paragraph five of the September 18, 2003, Judgment*).

11. That the Commission and the representatives of the victim and his next of kin informed the Court that the representatives have requested, at the domestic level, "that the decision of Section Six of the Penal Court, which declares the penal action for offences committed against the victim, Walter Bulacio, expired, be revoked" (*supra* Having seen 5 y 6).

12. That the Court has already pointed out in the judgment on the merits, reparations and costs delivered in the instant case that "concerning the expiration alleged at the domestic level of the case pending [...] this Court has indicated that expiration provisions, or any other internal law obstacle through which attempts be made to hamper the investigation and punishment of those responsible for human rights violations are inadmissible." ⁴

13. That the Court shall bring into its consideration the overall status of compliance with the September 18, 2003, judgment on the merits, reparations and costs, and with this Order, upon receipt of the pertinent information on measures not yet complied with and pending.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to supervise compliance with its decisions pursuant to the provisions in Articles 33, 62(1), 62(3), 65, 67 y 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Statute of the Court, and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That the State has fully complied with the requirements in operative paragraphs six to thirteen of the Judgment on the merits, reparations and costs delivered by this Court on September 18, 2003, as to publication of said Judgment, and compensation for material damages, immaterial damages, and costs and expenditures.

2. That it shall maintain open the procedure of supervision of compliance with the requirements indicated in considering paragraph ten of this Order.

DECIDES:

1. To require the State to adopt all measures deemed necessary to make effective and to promptly observe the measures not yet complied with and pending, which were ordered by the Court in its September 18, 2003, Judgment, in conformity with the provisions in Article 68(1) of the American Convention on Human Rights.

2. To require the State to submit, no later than January 31, 2005, a detailed report on the progress made in the investigations relative to all facts of the case and

⁴ *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 116.

to the punishment of those responsible, as well as on the process of adoption of legislative and any other measures required to adjust the domestic legislation to international human rights rules and to give them full effectiveness, so as to ensure that events such as those that gave rise to the instant case not occur again, as expressed in considering paragraph ten of this Order.

3. To request the Inter-American Commission on Human Rights, as well as the representatives of the victim and his next of kin to submit observations to the report of the State mentioned in the preceding operative paragraph, within six and four weeks, respectively, from the date of receipt.

4. To continue supervising compliance with the Judgment on the merits, reparations and costs delivered on September 18, 2003.

5. To notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the victim and his next of kin.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

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