

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF MAY 19, 2011**

CASE OF CASTILLO PÁEZ v. PERU

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgments delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") in this case: on preliminary objections on January 30, 1996; on merits on November 3, 1997 (hereinafter "judgment on merits"), and on reparations and costs on November 27, 1998 (hereinafter "judgment on reparations").

2. The Orders on monitoring compliance with judgment issued by the Court on June 1, 2001, November 27, 2002, November 27, 2003, December 17, 2004, and April 3, 2009. In the latter, the Court declared, *inter alia*:

1. That according to considering paragraphs 14 through 17 and 21 of th[e] Order, the State of Peru has complied with the second operative paragraph of the judgment on reparations delivered by the Court on November 27, 1998, regarding the obligation to investigate, identify, and punish those responsible for the forced disappearance of the youth Ernesto Rafael Castillo Páez.

2. That it will maintain open the procedure of supervising compliance as regards the obligation to adopt available measures to determine the whereabouts of Ernesto Rafael Castillo Páez, pursuant to considering paragraphs 21 and 23 of th[e] Order.

AND DECIDE[D]:

1. To require the State of Peru to adopt all necessary measures to effectively and promptly comply with the obligation indicated in the second operative paragraph, *supra*, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights, which is binding for all the State powers and bodies.

2. To request that the State of Peru present to the Inter-American Court of Human Rights, no later than July 15, 2009, a report indicating all the legal and administrative measures, as well as all measures of any other nature, carried out by its authorities to discover the whereabouts of the youth Ernesto Castillo Páez, in keeping with considering paragraph 22 of the [...] Order; and to require that the representatives of the victims and the Inter-American Commission of Human Rights present their observations on the State's report within four and six weeks, respectively, of receiving it.

3. To continue supervising compliance with the judgment on merits of November 3, 1997, and the judgment on reparations of November 27, 1998.

4. To evaluate the possibility of holding a private hearing on monitoring compliance with the judgments handed down in this case, of which the parties will be notified opportunistically.
[...]

* Judge Diego García-Sayan, a Peruvian national, recused himself from hearing this case; consequently he did not take part in the deliberation of this Order.

3. The brief of June 25, 2009, whereby the next of kin of Ernesto Castillo Páez asked the Court “to convene a hearing on monitoring the [judgments, and also] to issue an order declaring that Peru had still not complied fully with the Court’s decisions.”

4. The brief of June 29, 2009, whereby the Republic of Peru (hereinafter “the State” or “Peru”) presented a communication from the office of the Supranational Special Public Attorney regarding the “obligation to investigate, prosecute, and punish those responsible for the violation perpetrated in the Castillo Páez case.”

5. The notes of the Secretariat of the Court (hereinafter “the Secretariat”) of December 14, 2009, February 17, 2010, and February 2, 2011, informing the State that, in accordance with the second operative paragraph of the Order issued by the Court on April 3, 2009 (*supra* second having seen paragraph), it must present by July 15, 2009, at the latest, “a report indicating all the legal, administrative or other measures taken by its authorities to ascertain the whereabouts of the youth Ernesto Castillo Páez.” The Secretariat also informed the State that the brief presented on June 29, 2009, “d[id] not contain the information requested by the Court in the said Order [...]” and, consequently, on the instructions of the President of the Court, it was asked to submit the said report.

CONSIDERING THAT:

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

2. Peru has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

3. Under Article 67 of the American Convention, the State must comply fully and promptly with the judgments of the Court. Similarly, 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 national 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 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

¹ Cf. *Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of the Ituango Massacres v. Colombia. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of December 22, 2010, third and fourth considering paragraph, and *Case of Tibi v. Ecuador. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of March 3, 2011, third considering paragraph.

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.³

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 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.⁴

6. The States Parties to the Convention that have accepted the Court's compulsory jurisdiction have the duty to comply with the obligations established by the Court. This obligation includes the State's duty to inform the Court about the measures it has taken to comply with the rulings of the Court in its decisions. The State's prompt observance of its obligation to inform the Court about how it is complying with each of the aspects ordered by the Court is fundamental for evaluating the status of compliance with the judgment as a whole.⁵

a) *Obligation to adopt available measures to determine the whereabouts of Ernesto Rafael Castillo Páez (second operative paragraph of the judgment on reparations)*

7. After examining the documents forwarded by the State (*supra* fourth having seen paragraph), the Court found that they constitute "procedural documents from the [criminal proceedings] against Juan Carlos Mejía León and others for the crime against humanity - forced disappearance of Ernesto Castillo Páez [...]"⁶ which the Court had already analyzed⁷ in its Order of April 3, 2009 (*supra* second having seen paragraph). In this Order, the Court indicated, *inter alia*:

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; *Case of the Miguel Castro Castro Prison v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of December 21, 2010, sixth considering paragraph, and *Case of Tibi v. Ecuador. Monitoring compliance with judgment*, *supra* note 1, fourth considering paragraph.

³ Cf. *Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of November 17, 1999, third considering paragraph; *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, sixth considering paragraph, and *Case of Tibi v. Ecuador. Monitoring compliance with judgment*, *supra* note 1, fourth considering paragraph.

⁴ Cf. *Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, seventh considering paragraph, and *Case of Tibi v. Ecuador. Monitoring compliance with judgment*, *supra* note 1, fifth considering paragraph.

⁵ 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; *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, eighth considering paragraph, and *Case of Garibaldi v. Brazil. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of December of February 22, 2011, seventh considering paragraph.

⁶ It is worth noting that the documents forwarded by the State with its communication of June 29, 2009, already formed part of the file on monitoring compliance with the judgments delivered by the Court in this case, with the exception of two documents: (i) "The separate opinion of Supreme Court Justices Hugo Sivina Hurtado and José Luis Lecaros Cornejo, regarding the conviction of the defendant Juan Carlos Mejía León, [...]" and (ii) "The separate opinion of Justice Robinson Octavio Gonzales Campos, regarding the conviction of the defendant Juan Carlos Mejía León, [...]"

⁷ Cf. *Case of Castillo Páez v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of April 3, 2009, seventh to twenty-second considering paragraphs.

that all investigations into serious human rights violations must contribute to the realization of the right to truth and the reparation of the victims. In the case of forced disappearances, this right entails knowing the fate of the disappeared person. The Court observes that given the specific circumstances of the present case, the evidence collected during the investigation and the judicial proceedings carried out - mainly of a circumstantial and indirect nature - were insufficient to shed any new light on the events following the detention of Ernesto Castillo Páez or his final fate, and thus the victim's continues to be disappeared[.]⁸

8. In accordance with the general obligations to respect and guarantee the rights of the next of kin of Ernesto Castillo Páez, and as the Court has stated in the judgments on merits and on reparations delivered in this case, as well as in the said Order of April 3, 2009 (*supra* first and second having seen paragraphs), the State remains responsible for the obligation to adopt all measures available to it to determine the whereabouts of Ernesto Castillo Páez. In this regard, in paragraphs 90 and 105 of the judgments on merits and on reparations, respectively, the Court found that:

[even if] internal difficulties [...] prevent the identification of the individuals responsible for crimes of this kind, the victim's next of kin still have the right to know what happened to him and, if appropriate, the location of his remains. It is therefore incumbent on the State to use all the means at its disposal to satisfy these reasonable expectations.

9. Despite repeated requests from the Court (*supra* fifth having seen paragraph), the State has not presented information on whether judicial or any other measures have been taken made to reconstruct the events following the detention of Ernesto Castillo Páez and to determine his whereabouts. As indicated in the Order of April 3, 2009 (*supra* second having seen paragraph), during proceedings before the inter-American system, the next of kin of the disappeared victim reported that, according to unofficial information, the youth Castillo Páez "had been murdered on a beach south of Lima and his body had been blown up with explosives."⁹ Following the delivery of the judgment on reparations, the State has not advised this Court whether this version of the events has been discredited or corroborated by all the legal means available to its authorities. Therefore, the State is not observing its Convention-based obligation to inform the Court of how it is complying with this measure of reparation (*supra* sixth considering paragraph).

10. In order to monitor and guarantee the implementation of the measures of reparation ordered, the Court must be able to receive and verify information on execution of the judgment.¹⁰

11. To monitor full compliance with the judgments on merits and on reparations in this case (*supra* first having seen paragraph), the Court considers it essential that the State submit updated information on the legal, administrative, or other measures it has taken to ascertain the whereabouts of Ernesto Castillo Páez, additional to those already reported during the procedure of monitoring compliance with the judgments in this case, in keeping with the second operative paragraph of the Order of April 3, 2009 (*supra* second considering paragraph), and also the findings in this Order. The Court reserves the right to convene a hearing to assess compliance with the said decisions opportunely.

⁸ Cf. *Case of Castillo Páez v. Peru. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights* of April 3, 2009, eighteenth considering paragraph.

⁹ Cf. Testimony of Augusto Zuñiga Paz given before the Inter-American Court. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, para 30(e), and *Case of Castillo Páez v. Peru. Monitoring compliance with judgment, supra* note 8, twentieth considering paragraph.

¹⁰ 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, twentieth considering paragraph.

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

in exercise of its authority to monitor compliance with its decisions pursuant to Articles 33, 62(1), 62(3), 67 and 68(1) of the American Convention on Human Rights, Articles 24 and 30 of its Statute, and Articles 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. In accordance with the provisions of considering paragraphs 7 through 11 of this Order, the State is not complying with its obligation to inform the Court about the measures taken to comply with its rulings in the judgments on merits and on reparations delivered on November 3, 1997, and November 27, 1998, respectively.
2. It will keep the procedure of monitoring compliance open with regard to the obligation to adopt available measures to determine the whereabouts of Ernesto Rafael Castillo Páez, which is still pending.

AND DECIDES:

1. To require the Republic of Peru to adopt all necessary measures to comply promptly and effectively with the second operative paragraph of this order, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
2. To request the Republic of Peru to present to the Inter-American Court of Human Rights, by July 15, 2011, at the latest, a report indicating all the measures adopted to comply with the pending obligation, in accordance with the seventh to eleventh considering paragraphs of this Order.
3. To require the State, following presentation of the report required in the preceding paragraph, to continue reporting to the Court every three months on the measures taken to comply with the pending obligation.
4. To request the representatives of the victims and the Inter-American Commission on Human Rights to present any observations they deem pertinent on the reports of the Republic of Peru mentioned in the second and third operative paragraphs within four and six weeks, respectively, of receiving them.
5. To continue monitoring compliance with the judgment on merits of November 3, 1997, and on reparations of November 27, 1998.
6. To order the Secretariat of the Court to notify this Order to the Republic of Peru, the Inter-American Commission on Human Rights, and the representatives of the victims.

Leonardo A. Franco
Acting President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra Alessandri
Secretary