

**RULING OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF FEBRUARY 2, 2006**

CASE OF "19 TRADESMEN" V. COLOMBIA

COMPLIANCE WITH JUDGMENT

CONSIDERING:

1. The Judgment on merits, reparations, and costs issued on July 5, 2004 by the Inter-American Court on Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal"), through which the Court declared:

unanimously, [that]

1. the State violated the rights to personal liberty, humane treatment and life embodied in Articles 7, 5 and 4 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortiz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño), in the terms of paragraphs 134, 135, 136, 145, 146, 150, 155 and 156 of the [...] Judgment.

By six votes to one, [that]

2. the State violated the rights to a fair trial and to judicial protection embodied in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortiz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño) and their next of kin, in the terms of paragraphs 173, 174, 177, 200, 203, 204 and 205 of the [...] Judgment.

[...]

Unanimously, [that]

* The Judge Diego García-Sayán excused himself from knowing of the present case, pursuant to Articles 19 of the Statute and 19 of the Rules of Procedure of the Court, thus he did not participate in the issuing of the Judgment or of the present Ruling.

3. the State violated the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin of Álvaro Lobo Pacheco, Gerson Javier Rodríguez Quintero, Israel Pundor Quintero, Ángel María Barrera Sánchez, Antonio Flórez Contreras, Víctor Manuel Ayala Sánchez, Alirio Chaparro Murillo, Álvaro Camargo, Gilberto Ortiz Sarmiento, Reinaldo Corzo Vargas, Luis Hernando Jáuregui Jaimes, Luis Domingo Sauza Suárez, Juan Alberto Montero Fuentes, José Ferney Fernández Díaz, Rubén Emilio Pineda Bedoya, Carlos Arturo Riatiga Carvajal, Juan Bautista, Alberto Gómez (whose second last name was possibly Ramírez) and Huber Pérez (whose second last name was possibly Castaño), in the terms of paragraphs 212 to 218 of the [...] Judgment.

4. [t]his judgment constitutes, per se, a form of reparation, in the terms of paragraph 279 thereof.

AND DECIDE[D]:

unanimously that,

5. the State shall, in a reasonable time, investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed against the 19 tradesmen, for the criminal and any other effects that may arise from the investigation into the facts, and the result of this measure shall be disseminated publicly, in the terms of paragraphs 256 to 263 of the [...] Judgment.

6. the State shall conduct, within a reasonable time, a genuine search during which it makes every possible effort to determine with certainty what happened to the remains of the victims and, if possible, return them to their next of kin, in the terms of paragraphs 270 and 271 of the [...] Judgment.

7. the State shall erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, shall place a plaque with the names of the 19 tradesmen, in the terms of paragraph 273 of the [...] Judgment.

8. the State shall organize a public act to acknowledge its international responsibility for the facts of this case and to make amends to the memory of the 19 tradesmen, in the presence of the next of kin of the victims, and in which members of the highest State authorities must take part, in the terms of paragraph 274 of the [...] Judgment.

9. the State shall provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims, in the terms of paragraphs 277 and 278 of the [...] Judgment.

10. the State shall establish the necessary conditions for the members of the family of the victim, Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and shall cover the costs they incur as a result of their return, in the terms of paragraph 279 of the [...] Judgment.

11. the State shall pay special attention to guaranteeing the lives, safety and security of the persons who made statements before the Court and their next of kin, and shall provide them with the necessary protection from any persons, bearing in mind the circumstances of this case, in the terms of paragraph 280 of the [...] Judgment.

12. the State shall pay the total amount of US\$55,000.00 (fifty-five thousand United States dollars) or the equivalent in Colombian currency for loss of income for each of the 19 victims, in the terms of paragraphs 230, 231, 233, 234, 235, 240 and 243 of the [...] Judgment.

13. the State shall pay the total amount [set in the Judgment ...] for the expenditure incurred by the next of kin of the victims Juan Alberto Montero Fuentes, Víctor Manuel Ayala Sánchez, Gerson Javier Rodríguez Quintero, Antonio Flórez Contreras, Ángel María Barrera Sánchez, Alirio Chaparro Murillo, Álvaro Lobo Pacheco, Israel Pundor Quintero, Luis Hernando Jáuregui Jaimes, Rubén Emilio Pineda Bedoya and Reinaldo Corzo Vargas when trying to discover their whereabouts, in the terms of paragraphs 242 and 243 of the [...] Judgment.

14. the State shall pay the total amount [set in the Judgment ...] in compensation for non-pecuniary damage caused to each of the 19 victims, in the terms of paragraphs 230, 231, 235, 233, 234, 250, 251 and 252 of the [...] Judgment.

15. the State shall pay [the amounts set in the Judgment] in compensation for non-pecuniary damage caused to the next of kin of the victims[...].

16. the State shall pay the Colombian Jurists Commission the sum of US\$10,000.00 (ten thousand United States dollars), or the equivalent in Colombian currency, and the Center for Justice and International Law (CEJIL) the sum of US\$3,000.00 (three thousand United States dollars), or the equivalent in Colombian currency, for costs and expenses, in the terms of paragraph 285 of the [...] Judgment.

17. the State shall pay the total amount of the compensation for pecuniary damage, non-pecuniary damage, and costs and expenses established in this judgment, and that none of the respective items may be subject to any current or future tax or charge, in the terms of paragraph 292 of the [...] Judgment.

18. the State may fulfill its pecuniary obligations by payment in United States dollars or the equivalent sum in Colombian currency, except when making a bank investment, in the terms of paragraphs 290 and 291 of the [...] Judgment.

19. the State shall pay the compensations, reimburse the costs and expenses, and adopt the measures ordered in operative paragraphs 7, 8, 9, 10, 12, 13, 14, 15 and 16 of this judgment within one year of its notification, in the terms of paragraph 286 of the [...] Judgment.

20. should the State fall in arrears, it shall pay interest on the amount owed corresponding to the bank interest on payments in arrears in Colombia, in the terms of paragraph 293 of the [...] Judgment.

21. if, due to causes that can be attributed to the beneficiaries of the compensation, they are unable to receive it within the said period of one year from notification of this judgment, the State shall deposit such amounts in their favor in an account or a deposit certificate in a reputable Colombian banking institution, in the terms of paragraph 289 of the [...] Judgment.

22. the State shall deposit the compensation ordered in favor of the beneficiaries who are minors in a banking investment in their names in a reputable Colombia banking institution, in United States dollars, within one year, and in the most favorable financial conditions allowed by legislation and banking practice, while they are minors, in the terms of paragraph 290 of the [...] Judgment.

23. it shall monitor compliance with this judgment and shall file the instant case, when the State has fully implemented all its provisions. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 294 hereof.

2. The brief of May 31, 2005 and its Appendixes, through which the representatives of the victims and their next of kin (hereinafter "the representatives") forwarded a copy of the "proposal of compliance" presented to them by the State of Colombia (hereinafter "the State" or "Colombia") through brief of May 12, 2005 and the response given to the same by the representatives on May 23, 2005. The briefs express, in synthesis, the following:

a) in the brief of May 12, 2005 the State informed the representatives the way in which the tasks had been distributed between the different state entities to comply with the measures of reparation ordered by the Court, and it made a payment offer with Class B Treasury Titles (TES), with an original term of 10 years; and

- b) in the brief of May 23, 2005 the representatives stated the need to have a meeting to agree on the mechanisms of communication between the parties and define general aspects of the compliance with the Judgment. Likewise, they requested the modification of the proposal of payment of the compensations in order to ensure that the next of kin receive Colombian pesos or dollars of the United States of America, as stated in the Judgment.
3. The brief of July 13, 2005 and its Appendix, through which the State forwarded "the invitation to the public act of acknowledgment of responsibility for the disappearance and death of 19 Colombians [...], which would be held] on Friday July 15[, 2005] at 16:00 hours at the Ministry of Foreign Affairs."
4. The brief of July 14, 2005 and its Appendixes, through which the representatives expressed their objections to the way in which the State had decided to comply with the measures of reparation ordered by the Court and they specifically mentioned that the next of kin of the victims did not accept the act of acknowledgment of responsibility programmed by the State and they requested its suspension so that Colombia could adopt the measures necessary to satisfy the requirements of the Court. In synthesis they stated the following:
- a) that at the meeting held on June 24, 2005 with State representatives, the latter informed them that the erection of a monument that consisted in a obelisk of 3 by 2 meters had already been determined, that the resources destined to this effect would be "\$5,000,000", and they asked them to inform in which city did the next of kin want said monument to be installed. The representatives stated their opposition to the fact that the State did not consult with the next of kin what type of monument would be appropriate. For the next of kin, the monument must represent the ideals and characteristics of the victims and have a meaning for their next of kin. They consider that the monument proposed does not satisfy the objectives of the measure of reparation;
- b) regarding the act of acknowledgment of responsibility programmed by the State, in the meeting held on June 24, 2005 the representatives requested that consultations be made in order to reconsider the presence of the President of the Republic, or at least the Vice-President, and that the intervention of the victims' next of kin in the act be guaranteed. However, the State informed them that the inconvenience of the participation of the President or Vice-President of the Republic had been evaluated and that, therefore the Vice-Ministers of Foreign Affairs, of the Interior, of Justice, and of Defense would assist to the act, and that they would invite the Attorney General of the Republic but that they could not guarantee their assistance, not that of the commanders of the military cupola. They agreed to permit the intervention of the victims' next of kin in the mentioned act. The next of kin of the victims considered that this act should be coordinated and carried out with the presence of the highest State authorities, in order to achieve the effect of sending the message of preventing facts of this nature from happening again;
- c) regarding the obligation to provide, free of charge, through its specialized health institutions, the medical and psychological treatment required, the State informed them that the Ministry of Social Security was in charge of complying with the same and that they would be treated through

the National Hospital Network. The representatives expressed the convenience of signing an agreement with a specialized private health organization;

d) in the meeting held on June 26, 2005 they requested that a study be carried out to determine which would be the conditions offered by the State to the next of kin of the victim Antonio Florez Contreras so that they could return to Colombia, if they decided to do so; and

e) they expressed that they would be in conditions to receive the payment as presented, as long as Colombia assumes the transaction cost of making the security effective before its expiration, that is, that the next of kin of the victims receive the amount of money set in Colombian Pesos or dollars of the United States of America.

5. The brief of July 26, 2005 and its Appendixes, through which the State forwarded a report on compliance with the Judgment, in response to that stated in the twenty-third operative paragraph of the same. In synthesis, Colombia expressed the following:

a) regarding the obligation to investigate, through the order of May 7, 2005 the Specialized Public Prosecutor of the Unit of Human Rights and Humanitarian International Law included the Judgment of the Court in the case file it is following before that entity (established fact 87), "having that act in itself a reparatory nature because it proves the interiorization of the international decision." Likewise, it indicated that, according to the principles of legality and *res judicata*, it cannot "analyze" the actions and decisions of the military criminal justice with regard to the judicial situation of the former soldiers investigated, that it must present copies to the Comptroller General of the Nation of the judgment of the Inter-American Court so that, once it has analyzed it and if it considers it appropriate, it may start the action of revision within the criminal process started by the military criminal justice. Besides, the Judgment of the Court was included in the administrative-law proceedings followed before the Administrative Court of Santander;

b) regarding the search for the remains of the victims, through auto of May 7, 2005 the Special Prosecutor considered that it would proceed to reopen the investigation in its preliminary stages in order to allow the development of investigative activities tending to achieve the location of said remains, "without detriment of the fact that upon the appearance of elements of judgment that may compromise the responsibility in the facts of any citizen, the corresponding criminal action be started," and decided to "reopen the investigation in preliminary stages that was started for the kidnapping and subsequent murder of Alvaro Lobo Pacheco, Gerson Javier Rodríguez, Israle Pundor Quintero, Angel Maria Barrera, Antonio Flores Contreras, Carlos Riatiga, Victor Manuel Ayala, Alirio Chaparro Murillo, Huber Perez, Alvaro Camargo, Rubén Emilio Pineda, Gilberto Ortiz Sarmiento, Reinaldo Corso Vargas, Luis Hernando Jáuregui, Juan Bautista Alberto Gómez, Luis Domingo Sauza, Juan Alberto Montero, and José Ferney Fernandez, according to the facts occurred in the month of October 1987, in the surroundings of the road to the city of Cúcuta which leads to Medellín." Said investigation has number 087-A and in it several tests have been ordered tending to find the remains of the victims, among which we can mention, "work order to the human rights

group of the Technical Research Body.” Despite the fact that the next of kin of the victims have expressed their reluctance to become a civil party in the investigation, the Public Prosecutor’s Office has set up spaces so that the Fiscal may establish contact with them;

c) disposed of the budget to erect a monument in memory of the victims, and it proposed that it be located in the city of Bucaramanga, the regional capital closest to the place of the facts. It requested that the representatives indicate at least three locations for the monument, without having received a response;

d) with regard to the act of acknowledgment of responsibility, on June 24, 2005 in a meeting held with the representatives of the petitioners, the State informed them of its decision to hold said act on July 15, 2005 and requested their collaboration in achieving the presence of the next of kin of the victims at the act. Likewise, the invitations to the act were given to them and they were informed “of their willingness to assume the cost of transportation, lodging, and food of the next of kin of the victims, for the period of time necessary to assist to the act, according to the distances from the normal places of residency.” On July 13, 2005 it received a communication signed by the representatives, in which they returned the invitations to the act of acknowledgment programmed for July 15, 2005, since “they did not consider that the event unilaterally programmed by the government [...] complied with the conditions imposed by the Court.” Said act had the solemnity, respect, and protocol required and the Secretary of Foreign Affairs was present, as well as the next of kin of some victims, and representatives of other state entities such as the Ombudsman of the People and the Attorney General of the Nation;

e) regarding the medical and psychological treatment, the Ministry of Social Protection provided the representatives with the names of the institutions located in the cities indicated by them that offer specialized attention in said treatments. “Given the characteristics of the institutions that offer health services within the System, the State will comply with the Judgment through its own institutions that offer Health Services, at all levels of complexity.” It is waiting for the representatives to provide the name and location of the next of kin of the victims in order to identify the people that require the health services and psychosocial attention;

f) regarding the establishment of the conditions of return of the next of kin of the victim Antonio Flórez Contreras, the Administrative Department and the National Police must still carry out the study of the level of risk and degree of threat that will allow the determination of the corresponding measures of protection for the case, taking into account the information that may be given by the representatives on the composition of the family group, where they plan to come back, as well as their current location;

g) in the meeting held on June 24, 2005, the representatives stated that, up to this date, “the declaring next of kin” had not been the victims of any threats or retaliation and they agreed to be attentive to any abnormal situation in order to take the measures of protection required;

- h) the representatives accepted "the payment of the obligation of the international judgment" in bonds of public debt, that is, they agree with the change of monetary modality, requesting that the risks of the operation of redemption be assumed by the State. The rights contained in the securities correspond to the value of the Judgment, and once consigned in the Account of the Central Deposit of Securities of the Bank of the Republic, they are freely negotiable in the public stock market and, therefore, subject to the profits or losses implicit to the operations. The redemption risks of the bonds of the Treasury do not constitute a lien or tax over the payments they represent;
 - i) it is carrying out the budgetary approaches that will allow payment of the costs and expenses ordered; and
 - j) with regard to the next of kin of the 3 tradesmen regarding whom there is not enough information to identify them in order to pay the compensations set in the Judgment, in order to find out there whereabouts it made publications through the means and with the content ordered in the Judgment. In a footnote it indicated that it was enclosing the copies of the "certifications issued by the media in which the publications, written, through radio, and television, were made." The State later forwarded said Appendixes. (*infra* Consideration 8).
6. The brief of July 28, 2005 and its Appendix, through which the representatives asked the Court to summon a meeting to continue with the conversations destined to agreeing on the mechanisms that must be adopted in order to fully comply with the measures of reparation. Likewise, they requested that several State entities be summoned to the mentioned meeting.
7. The brief of September 5, 2005, through which the State transcribed the content of the official letter DDH.46840 addressed to the representatives, in which they transmitted the "notes of style" signed by the Vice-President of the Republic addressed to the next of kin of the victims that did not assist to the public act of acknowledgment of responsibility. In the mentioned notes, the Vice-President expressed, *inter alia*: "We understand and regret what occurred and the damages caused for which we ask for your forgiveness on behalf of our Nation, which accepts responsibility for the facts [...] we reaffirm our will to adopt the measures necessary to avoid these facts from happening again." Said letter was forwarded to the Secretariat of the Court on September 16, 2005.
8. The brief of September 9, 2005, through which the State forwarded the remaining Appendixes to its report of July 26, 2005 (*supra* Consideration 5(j)). Among them, it presented the following documents in relation with the measures carried out to find the next of kin of three victims and give them the reparations that correspond to them: copy of a certification issued by the Programming Manager of CM&Televisión regarding the transmission of the edict of the victim Juan Bautista; copy of a certification issued by the radio station Radio Continental Cadena Básica de Todelar regarding the location of the next of kin of the three victims; and copy of the publications on the location of the next of kin of the three victims in the newspaper El Tiempo on June 16, 18, and 20, 2005.
9. The notes of the Secretariat of the Court of September 13 and 27, 2005, through which it, *inter alia*, requests that the representatives and the Inter-American

Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") forward, as soon as possible, their observations to the State's report of July 26, 2005 and the State's brief of July 13, 2005 (*supra* Considerations 3 and 5).

10. The brief of October 3, 2005, through which the representatives forwarded their observations to the state's report of July 26, 2005 and the state's report of July 13, 2005 (*supra* Considerations 3, 5, and 9). In synthesis, they stated the following:

a) regarding the obligation to investigate, the Colombian authorities do not comply with the reasonable period of time referred to in the Judgment. It is not until May 7, 2005 that it ordered the reopening of the preliminary investigation. The dispersion of actions with different purposes may lead to exhausting all efforts without obtaining efficient results. The State should explain what the benefit is in direction of compliance with the Judgment of starting a new preliminary investigation. They request that the State indicate the reasons that prevent it from initiating in an immediate and effective manner compliance with that ordered in the Judgment, thus submitting the members of the public force that participated in the facts to investigation, prosecution, and, if necessary, punishment within a procedure before an ordinary court;

b) regarding the search and delivery of the remains of the victims, "the government's report would indicate that the actions carried out were not called to be carried out within a reasonable period of time and that they do not have the tools necessary to invest it with seriousness." The investigators of the Technical Body of Investigations of the Prosecutor's Office were ordered to determine if the property of the Pérez's family and some places referred to by those condemned in the domestic investigations existed or not, without knowing the results of said inquiries. Contact with the next of kin of the victims has not been established again in search of information that could be relevant for the search. The existence or lack thereof of a civil party within the investigation does not prevent that the State fully comply with that ordered in the Judgment. The next of kin and their representatives have been attentive to supporting the search actions carried out;

c) regarding the monument in memory of the victims, they requested that the Court require that the State take into consideration the opinions of the next of kin of the victims and that it take into account that the monument has the objective of maintaining the memory of the victims alive and of creating awareness so that facts of the same nature do not occur again;

d) regarding the public act of acknowledgment of responsibility, the State denied the requests that the act be directed by the highest state authorities. The purposes of the measure of reparation have not been complied with. It is necessary that the State acknowledge "that the persons detained missing as of October 6, 1987 were not guerrilla fighters or collaborators of the guerrilla" and that it also state what cannot happen again. The State refused to accept the requests made regarding the need that the highest authorities direct the act and "it was not until the last minute that the Government decided to include the Secretary of Foreign Affairs in the event." The attitude shown by the State is formally of respect and compliance, but in the practice it has not

effectively acknowledged the Court's decision. The State should have included the commanders of the military forces and the police in the act;

e) regarding medical and psychological treatment, it is first necessary to know the expectations of the next of kin of the victims, to determine in which measure these institutions are trained to respond to the specific assistance they are being obliged to, since it is a specific attention that implies the exposure of very personal and intimate information that would imply taking strict measures to ensure that the professionals in charge of helping them handle the information with the greatest discretion;

f) regarding the establishment of the conditions for the return of the next of kin of Mr. Florez Contreras, the State has the duty to study the security situation, determine which are the measures and actions carried out by the authorities in order to establish the conditions and guarantees that the State should offer the next of kin of Antonio Florez Conteras so they may return to their place of residence. They request that the State inform of the actions carried out to confront, investigate, prosecute, and punish the paramilitary groups that provoked the forceful move of Antonio Florez Contreras' family;

g) regarding payment of the compensations to the next of kin of the victims, they consider that it is indispensable that Colombia pay the amounts in which the next of kin must incur in order to make the bonds effective in an anticipated manner at a 10-year expiration term, since the State is obliged to pay the total value of the compensation without discounts of any nature;

h) regarding the publications in order to find out the whereabouts of the next of kin of the three victims, in order to pay them the compensations set in the Judgment, the next of kin of the victim Alberto Gómez "already appeared before the State." The copies of the publications sent by the State indicate that it only made the oral and written publications but not the television ones. Besides, said publications were made too close to one another. The attestation of CM& television makes reference to the transmission of the communication through the radio station "Sonido Bestial" on June 15, 17, and 20, 2005; and

i) the State has informed them that the payment of costs and expenses is being processed through an administrative body of State resources, FONADE. That body has asked them to present some forms in order to proceed with the payment. They consider that while the form and conditions in which the compensations will be paid, payment of the costs and expenses cannot be received.

11. The brief of October 19, 2005, through which the Commission presented its observations to the State's report of July 26, 2005 and the State's report of July 13, 2005 (*supra* Considerations 3, 5, and 9). It left evidence of its concern regarding the fact that the State had only adopted measures seeing to ensure compliance of a few obligations. Likewise, it indicated that it considers that the Court decided to "give a consensual nature" to some of the obligations established in the Judgment, such as the erection of a monument, the placement of the commemorative plaque, the acknowledgment of responsibility and the provision of medical and psychological treatment. Besides, it indicated in synthesis, the following:

- a) regarding the obligation to investigate, it is concerned with the fact that no effective action has been carried out in compliance with that established in the Judgment. That informed by the State caught its attention in the sense that "the actions and decisions of the Military Criminal Justice could not be analyzed in relation with the juridical situation of the former soldiers investigated," since this is a matter established in the Judgment. The Court considered it convenient to determine certain requirements that the investigation must have, such as that it be carried out within a reasonable period of time, that it be effective in the investigation and punishment of all the perpetrators of the facts, that it be carried out through ordinary criminal courts, that measures that prevent the criminal persecution or that suppress the effects of the conviction not be applied, and that the results be disseminated. There is not a single element in the information provided by the State that leads to the conclusion that these requirements are being complied with. "The State's actions of starting the proceedings do not seem to correspond with the intensity of the procedural activity one could expect after a year of activities of seeking justice;"
- b) regarding the search for the mortal remains, it considers that the measures referred to by the State do not correspond to the progress that could be reasonably "expected after a year of activity;"
- c) regarding the establishment of the conditions for the return of the next of kin of Mr. Flores Contreras, an efficient and effective investigation is the ideal measure to eradicate the risk of an irreparable damage, but it is not the only one. It regrets the absence in the state's report of the studies that specify the characteristics of risk to which this family would be subject, as well as a technical proposal to face said risk;
- d) regarding the erection of a monument in memory of the victims, it verified the absolute disagreement of the next of kin of the victims with the manner chosen to commemorate their loved ones. It considers that it will be difficult for them to consider the mentioned monument as a measure of reparation;
- e) regarding the commemorative plaque, neither the State nor the representatives referred to this obligation. It understands that it is complementary to that of the erection of the monument, reason for which its compliance would be pending until the controversy over the latter is solved;
- f) regarding the public act of acknowledgment of responsibility, it takes note that the execution of this measure has not satisfied the majority of the next of kin of the victims. "It deeply regrets that this is the case, because it acknowledges important gestures and valuable practices in the act carried out that would have deserved a better future." It verified that the organization was carried out with very little anticipation to its actual realization. It does not consider it prudent that the bodies of the Inter-American System for the Protection of Human Rights give the acts of constriction a specific design; however, there is an obligation to verify if the execution of the measure of reparation was made in such a way that, according to logic and experience, it propitiate the full compliance of the obligations. "[T]he Commission considers that the current status of this obligation is of compliance regarding two of the victims, and pending with regard to the other seventeen;"

g) regarding the obligations to seek the next of kin of three victims, it points out that the next of kin of one of them have already been located. The Court established in the Judgment that the measures of diffusion ordered were part of a minimum. The measures adopted by the State have not achieved the useful object sought;

h) regarding the payments ordered in favor of the next of kin of the victims, as compensation, it considers that it is clear that the Court has ordered that the next of kin must dispose of the amounts ordered without any deduction; and

i) regarding the creation of banking investments in favor of the underage beneficiaries, the State did not refer specifically to this matter in its report.

12. The brief of November 16, 2005, through which the Commission forwarded a copy of a communication to the representatives and their next of kin regarding a diligence for the search of the remains of the victims, which was programmed by the Attorney General of the Nation to be carried out on November 15, 16, and 17, 2005. In said communication, the representatives asked the Commission "to get in contact with the Colombian authorities, in order to ensure that the next of kin and their representatives enjoy all the guarantees in order to participate in the mentioned diligence."

WHEREAS:

1. That the supervision of compliance with its decisions is a power inherent to the jurisdictional functions of the Court.

2. That Colombia is a State Party in the American Convention since July 31, 1973 and it acknowledged the obligatory competence of the Court on June 21, 1985.

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." For this the States must ensure the implementation at a domestic level of that ordered by the Tribunal in its decisions.¹

4. That in virtue of the definitive and unappealable nature of the judgments of the Court, pursuant to that established in Article 67 of the American Convention, these must be complied with in a prompt manner by the State in a comprehensive manner.

5. That the obligation to comply with that stated in the decisions of the Court correspond to a basic principle of law on the State's international responsibility, backed up by the international jurisprudence, according to which the States must comply with their international conventional obligations with good faith (*pacta sunt servanda*) and, as has already been stated by this Court and in Article 27 of the Vienna Convention on the Law of the Treaties of 1969, they may not, due to reasons

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

of domestic law, ignore the international responsibility already established.² The conventional obligations of the States Parties are binding for all the powers and bodies of the State.

6. That the States Parties to the Convention must guarantee compliance of the conventional stipulations and their effects (*effet utile*) in the realm of their respective domestic law. This principle is applied not only in relation to the substantive norms of the human rights treaties (that is, those that include stipulations regarding the protected rights), but also in relation to procedural norms, such as those that refer to the compliance of the decisions of the Court. These obligations must be interpreted and applied in such a way that the protected guarantee is actually practical and efficient, having present the special nature of the human rights treaties.³

7. That the States Parties to the Convention that have acknowledged the Court's obligatory jurisdiction have the duty to comply with the obligations established by the Tribunal. In this sense, Colombia must adopt all the necessary measures in order to effectively comply with that ordered by the Court in its Judgment of July 5, 2004 (*supra* Consideration 1), as well as in the present Ruling on the status of compliance with the mentioned Judgment. This obligation includes the State's duty to inform on the measures adopted for the compliance of that ordered by the Tribunal in said decisions. The timely observance of the state's obligation to inform the Tribunal of how it is complying with each of the points ordered by the latter is essential for the evaluation of the status of compliance with the case.

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8. That when supervising the comprehensive compliance of the Judgment issued in the present case, and after analyzing the information provided by the State, the Commission, and by the representative on the compliance with the reparations, the Court has verified the points ordered in said Judgment that have been complied with by Colombia, as well as the reparations whose compliance is still pending.

9. That the Court has proven that Colombia has complied with:

a) locating the next of kin of the victim Alberto Gómez (*supra* Considerations 10(h) and 11(g)), reason for which what is pending is to deliver to them the corresponding reparations (*paragraph 233 of the Judgment*); and

² Cfr. *Case of Cantos*. Compliance with Judgment. Ruling of the Inter-American Court of Human Rights of November 28, 2005, fifth whereas clause; *Case of Baena Ricardo et al.* Compliance with Judgment. Ruling of the Inter-American Court of Human Rights of November 28, 2005, fifth whereas clause; and *Case of the Gómez Paquiyauri Brothers*, Compliance with Judgment. Ruling of the Inter-American Court of Human Rights of November 17, 2005, fifth Whereas clause.

³ Cfr. *Case of Cantos*. Compliance with Judgment, *supra* note 2, sixth Whereas clause; *Case of Baena Ricardo et al.*, *supra* note 2, sixth Whereas clause; and *Case of the Gómez Paquiyauri Brothers*. Compliance with Judgment, *supra* note 2, sixth Whereas clause. Similarly, *cfr., inter alia*, *Case of YATAMA*. Judgment of June 23, 2005. Series C No. 127, para. 170; *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 101; and *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 64.

b) “organize a public act to acknowledge its international responsibility for the facts of this case and to make amends to the memory of the 19 tradesmen (*eighth operative paragraph and paragraph 274 of the Judgment*). After taking into account the observations of the representatives and the Commission, the Court does not find enough reason to consider that the act of acknowledgment of responsibility held by Colombia on July 15, 2005 does not comply with that stated in the Judgment. In the Judgment the Tribunal stated that “members of the highest State authorities should participate” in the act, which does not necessarily mean that the President or the Vice-President of the Republic have to be present in order for the measure to be effective. Said act was presided by the Secretary of Foreign Affairs, who is one of the highest authorities, and representatives of state entities participated, such as the Attorney General of the Nation and the Ombudsman of the People. Besides, the Tribunal has taken into consideration that the State offered the next of kin of the victims transportation and lodging so they could assist to the act and that the next of kin of two of the victims, who decided to assist to the act of acknowledgment, participated in it.

10. That the Court considers that it is indispensable that the State present updated information on the following matters whose compliance is still pending:

a) “in a reasonable time, investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed against the 19 tradesmen, for the criminal and any other effects that may arise from the investigation into the facts, and the result of this measure shall be disseminated publicly.” (*fifth operative paragraph and paragraphs 256 through 263 of the Judgment*) The Court considers it necessary that the State present detailed and complete information on the investigation that it reopened through the prosecutor’s order of May 7, 2005. With regard to the manner in which this obligation is complied with, the Court reiterates that stated in paragraphs 256 through 263 of the Judgment;

b) “conduct, within a reasonable time, a genuine search during which it makes every possible effort to determine with certainty what happened to the remains of the victims and, if possible, return them to their next of kin.” (*sixth operative paragraph and paragraphs 270 and 271 of the Judgment*). The Court requires that the State forward updated information on the compliance, especially on the progress made by the “human rights group of the Technical Research Body” (*supra* Consideration 5(b)) and on the search diligence that would have been programmed by the Public Prosecutor’s Office of the Republic to be carried out in November 2005, as informed by the Commission (*supra* Consideration 12);

c) “erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, [...] place a plaque with the names of the 19 tradesmen.” (*seventh operative paragraph and paragraph 273 of the Judgment*) The Court recalls that, pursuant to that stated in the Judgment, the election of the place where the monument is erected must be agreed on between the State and the next of kin of the victims, and it points out that the State has proposed a place for its location and is waiting for a reply from the representatives. Likewise, the Court considers that it is convenient that upon complying with this measure

Colombia take into account that one of its purposes is to keep the memory of the victims alive, reason for which it should listen to the opinion of the next of kin on the type of monument and the reasonable alternatives that could be effective in implementing the measure, without this leading to an unjustified delay in the execution of the measure;

d) “provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims.” (*ninth operative paragraph and paragraphs 277 and 278 of the Judgment*) With regard to this measure the representatives requested that the treatment be offered by a private institution, for which the State should enter an agreement, based on the uncertainty it has on “the measure in which [the state] institutions are capable in this specific case to respond to the specific assistance they are being obliged to undertake,” “which implies an exposure to very personal and intimate information [...]” This Tribunal understands that the State must comply with said obligation through its health institutions, as stated in the Judgment, but recalls that they should be specialized institutions and that all the parameters stated in paragraphs 277 and 278 of the same must be observed. In order to correctly comply with this measure it is necessary that the State receive the worries of the next of kin of the victims and ensure the specific capacity required in the professionals in charge of offering the treatments. The Court takes into consideration that the State offered the representatives the information on the institutions in which the next of kin of the victims can receive the medical and psychological treatment, and that it is awaiting that the representatives provide it with specific information in order to comply with this measure;

e) establish the necessary conditions for the members of the family of the victim, Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and shall cover the costs they incur as a result of their return (*tenth operative paragraph and paragraph 279 of the Judgment*). The Court considers that it is necessary that the State inform of the study on the level of risk and the degree of threat referred to in their report (*supra* Consideration 5(f)), thus determining the measures it will implement, necessary for the return of the members of said family that so wish to do so;

f) pay special attention to guaranteeing the lives, safety and security of the persons who made statements before the Court and their next of kin, and shall provide them with the necessary protection from any persons, bearing in mind the circumstances of this case (*eleventh operative paragraph and paragraph 280 of the Judgment*). According to that informed by the State there was no threat to the life, integrity, and security of those people and it will be attentive to the need to adopt measures of protection (*supra* Consideration 5(g));

g) pay the amounts established in the Judgment for the income that each of the 19 victims did not perceive, the expenses in which the next of kin of eleven victims incurred, and compensation for non-pecuniary damages (*twelfth, thirteenth, fourteenth, and fifteenth operative paragraphs and paragraphs 230, 231, 233, 234, 235, 240, 243 242, 243, 248, 249, 250, 251, and 252 of the Judgment*). With regard to the change in the form of payment proposed by the State to the representatives of the victims, which implies payment with bonds of public debt, the Court recalls the parties that the form

in which the payment of the compensations stated in the Judgment is made is established in the same and if they should reach an agreement on the need and convenience of making a change in this regard, it is necessary that it be communicated to the Tribunal, so it may evaluate it;

h) deposit the compensation ordered in favor of the beneficiaries who are minors in a banking investment in their names in a reputable Colombia banking institution, in United States dollars, within one year, and in the most favorable financial conditions allowed by legislation and banking practice, while they are minors (*twenty-second operative paragraph and paragraph 290 of the Judgment*). In its report Colombia did not present specific information on this matter;

i) adopt the actions necessary to find the next of kin of Messrs. Juan Bautista and Huber Pérez (whose second last name was possibly Castaño) and deliver the corresponding reparations to them. For this, Colombia must broadcast by a radio station, a television channel and a newspaper, all with national coverage, an announcement indicating that it is trying to locate the next of kin of said victims, to provide them with a reparation with regard to the facts of this case (*paragraph 233 of the Judgment*). The representatives argued that the copies of the publications sent by the State indicate that it only made the oral and written publications but not the television ones. The Tribunal asked the State to offer information in this regard, and to state if it made the publications on television and radio "on at least 3 non-consecutive days", as established in the Judgment, since that information is not included in the certifications offered. Likewise, the Tribunal requests that the State indicate if it has adopted other actions necessary to find said next of kin; and

j) reimbursement of costs and expenses (*sixteenth operative paragraph and paragraph 285 of the Judgment*). In this regard the State informed that it was carrying out "the budgetary procedures that permit payment," thus it is precise that it forward updated information in this sense.

11. That it is still a concern for the Court that, according to the information provided, the representatives of the next of kin of the victims and the State do not agree on how several measures of reparation should be complied with, which could affect the development of the execution of the reparations, as occurred with the act of acknowledgment of responsibility (*supra* Whereas Clause 9(b)). In this regard, the Tribunal asks both the State and the representatives to try to observe a behavior that may lead to compliance with the Judgment.

12. That the Court will consider the general state of compliance of the Judgment on merits, reparations, and costs of July 5, 2004, once it receives the relevant information on the pending measures of compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its powers of supervision of compliance with its decisions, 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 the Statutes and 29(2) of its Rules of Procedures,

DECLARES:

1. That pursuant to that stated in the ninth Whereas clause of the present Ruling, the State has complied with:

a) locating the next of kin of the victim Alberto Gómez, thus what remains is that it deliver to them the corresponding reparations (*paragraph 233 of the Judgment*); and

b) "organizing a public act to acknowledge its international responsibility for the facts of this case and to make amends to the memory of the 19 tradesmen." (*eighth operative paragraph and paragraph 274 of the Judgment*)

2. That it will maintain open the procedure of supervision of compliance of the pending matters in the present case, specifically:

a) "in a reasonable time, investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed against the 19 tradesmen, for the criminal and any other effects that may arise from the investigation into the facts, and the result of this measure shall be disseminated publicly;" (*fifth operative paragraph of paragraphs 256 through 263 of the Judgment*)

b) "conduct, within a reasonable time, a genuine search during which it makes every possible effort to determine with certainty what happened to the remains of the victims and, if possible, return them to their next of kin;" (*sixth operative paragraph and paragraphs 270 and 271 of the Judgment*)

c) "erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, shall place a plaque with the names of the 19 tradesmen;" (*seventh operative paragraph and paragraph 273 of the Judgment*)

d) "provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims;" (*ninth operative paragraph and paragraphs 277 and 278 of the Judgment*)

e) establish the necessary conditions for the members of the family of the victim, Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and shall cover the costs they incur as a result of their return; (*tenth operative paragraph and paragraph 279 of the Judgment*);

f) pay special attention to guaranteeing the lives, safety and security of the persons who made statements before the Court and their next of kin, and shall provide them with the necessary protection from any persons, bearing in mind the circumstances of this case; (*eleventh operative paragraph and paragraph 280 of the Judgment*)

g) pay the amounts established in the Judgment for the income that each of the 19 victims did not perceive, the expenses in which the next of kin of

eleven victims incurred, and compensation for non-pecuniary damages; (*twelfth, thirteenth, fourteenth, and fifteenth operative paragraphs and paragraphs 230, 231, 233, 234, 235, 240, 243 242, 243, 248, 249, 250, 251, and 252 of the Judgment*);

h) deposit the compensation ordered in favor of the beneficiaries who are minors in a banking investment in their names in a reputable Colombia banking institution, in United States dollars, within one year, and in the most favorable financial conditions allowed by legislation and banking practice, while they are minors (*twenty-second operative paragraph and paragraph 290 of the Judgment*);

i) adopt the actions necessary to find the next of kin of Messrs. Juan Bautista and Huber Pérez (whose second last name was possibly Castaño) and deliver the corresponding reparations to them (*paragraph 233 of the Judgment*); and

j) reimbursement of costs and expenses (*sixteenth operative paragraph and paragraph 285 of the Judgment*).

AND DECIDES:

1. To urge the State to adopt all the measures necessary to give effect and prompt compliance to the matters pending of compliance that were ordered by the Tribunal in the Judgment on merits, reparations and costs of July 5, 2004, pursuant to that stipulated in Article 68(1) of the American Convention on Human Rights.

2. To request the State to present, no later than May 24, 2006, a report in which it indicates all the measures adopted to comply with the reparations ordered by this Court whose compliance is still pending, pursuant to that stated in the tenth Whereas cause and in the second declarative item of the present Ruling.

3. To request that the representatives of the next of kin of the victims and the Inter-American Court of Human Rights present observations the State's report mentioned in the previous operative paragraph, within four and six weeks, respectively, as of the receipt of the report.

4. To continue to supervise compliance with the Judgment on merits, reparations, and costs of July 5, 2004.

5. To request that the Secretariat of the Court notify the present Ruling to the State, the Inter-American Commission of Human Rights, and the representatives of the next of kin of the victims.

Sergio García Ramírez
President

Alirio Abreu Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary