

**Order of the
Inter-American Court of Human Rights*
of February 03, 2010
Case of Garcia Prieto *et al.* v. El Salvador
(Monitoring Compliance with Judgment)**

Having Seen:

1. The Judgment on preliminary objections, the merits, reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") on November 20, 2007, in which it decided that the State must:

[...]

5. bring to a proper conclusion, within a reasonable time, the pending investigation into the homicide of Ramón Mauricio Garcia Prieto and the investigation into the threats and harassment in the terms of paragraphs 192 to 197 of the [...] Judgment.

6. in the terms of paragraph 198 of the [...] Judgment, publish, in its Official Gazette and in another newspaper of broad national circulation, within six months as from notice thereof, the following: the operative paragraphs of th[e] Judgment, as well as the following paragraphs: 1 to 3, 5 to 11 of Section I, titled "Introduction to the Case and Subject-Matter of the Dispute"; 76 to 160 of Section VIII, titled "Article 5 (Right to Humane Treatment), 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) in relation with Article 1(1) (Obligation to Respect Rights) of the Convention, including the names of each section and subsection respectively and without the footnotes.

7. [The State shall] provide, free of charge, the medical, psychiatric, or psychological assistance that may be needed by José Mauricio Garcia Prieto Hirlemann and Gloria Giralt de Garcia Prieto, in the terms of paragraphs 200 and 201 of the [...] Judgment.

8. pay José Mauricio Garcia Prieto Hirlemann and Gloria Giralt de Garcia Prieto the amounts established in paragraph 185, as compensation for non-pecuniary damages, within a period of one year counted from the date of service of the [...] Judgment, as established in paragraphs 183 to 186 thereof.

9. within a period of one year from the date of notice of the [...] Judgment, pay Gloria Giralt de Garcia Prieto the amount indicated in paragraph 207 of the [...] for the costs and expenses incurred both in the domestic sphere and before the Inter-American system of protection of human rights, in the terms of paragraphs 206 and 207 of the above mentioned Judgment.

10. [The Court will] supervise the integral implementation of [the] Judgment, and will consider the [...] case closed once the State has fully complied with the orders contained therein.

* Judge Diego García-Sayán excused himself of hearing the present case, in conformity with Articles 19(2) of the Statute and 19 of the Rules of Procedure of the Court active then (now Article 21), therefore he did not participate in the deliberation and signing of the Judgment and the present Order. Judge García-Sayán handed over the Presidency, in terms of Article 4(2) of the Rules of Procedure, to the Vice-President of the Court, Judge Leonardo A. Franco, President in exercise in the present case.

Within a year of notification of [the] judgment, the State must send the Court a report on the measures adopted to comply with it.

[...]

2. The Order by the President of the Court issued on December 18, 2009, whereby, exercising the powers the Court has to monitor compliance with its decisions, she called the Inter-American Commission of Human Rights (hereinafter, "the Commission" or "the Inter-American Commission"), the Republic of El Salvador (hereinafter, "the State" or "El Salvador") and the representatives of the victim (hereinafter, "the representatives") to a public hearing, in order for the Court to obtain information from the State as regards compliance with the Judgment delivered in the instant case, and to receive the observations made by the Commission and by the representatives thereupon.

3. The argument by the parties at the public hearing on monitoring compliance with the Judgment held on January 28, 2010, at the seat of the Court.¹

Considering:

1. That one of the inherent powers of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. That El Salvador has been a State Party to the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") since June 23, 1978 and, under Article 62 thereof, it accepted the contentious jurisdiction of the Court on June 06, 1995.

3. That Article 68(1) of the American Convention sets forth 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 such purpose, the State must ensure the implementation of the decisions in the Court's judgments at the domestic level.²

4. That in view of the final and non-appealable character of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly by the State within the term established to such effect.

5. That the States Parties to the Convention, having once accepted the binding jurisdiction of the Court, must honor the obligations set by the Court. In that sense, El Salvador must adopt all the necessary measures to promptly comply with the terms

¹ There appeared at such hearing on behalf of the Inter-American Commission: Ms. Lilly Ching and Ms. Silvia Serrano, counsel; on behalf of the representatives of the victims: Messrs. Benjamín Cuéllar Martínez (IDHUCA) and Henry Fino Solórzano (IDHUCA), and Ms. Gisela de León (CEJIL); and on behalf of the State: David Ernesto Morales Cruz, Agent and *Director General de Derechos Humanos del Ministerio de Relaciones Exteriores* [Director General for Human Rights with the Foreign Affairs Ministry]; Sebastián Vaquerano, Deputy Agent and Ambassador of the Republic of El Salvador to Costa Rica, and Ms. Tania Camila Rosa, *Sub Directora de Derechos Humanos del Ministerio de Relaciones Exteriores* [Deputy Director for Human Rights with the Foreign Affairs Ministry].

² Cf. *Case of Baena Ricardo et al. Competence*. Judgment delivered on November 28, 2003. Series C No. 104, para. 131; *Case of La Cantuta v. Peru. Monitoring Compliance with Judgment*. Order of the Court of November 20, 2009, Considering Clause Number Three; and *Case of Ivcher Bronstein v. Peru. Monitoring Compliance with Judgment*. Order of the Court of November 24, 2009, Considering Clause Number Three.

established in the Judgment delivered on November 20, 2007. Such obligation includes the duty the State has to report on the measures adopted in order to comply with the decisions in the above mentioned Judgment. The timely observance of the obligation the State has to inform the Tribunal of how it is complying with each of the points ordered by the latter is of the essence in order to assess the status of compliance with all of the Judgments.³

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6. At the public hearing, the State expressed it regretted the unfounded suspicions the members of the Garcia Prieto Giralt family had had to suffer and it retracted them, for which reason it asked the representatives to transmit its apologies to the Garcia Prieto Giralt family. Furthermore, the State underscored “the unremitting struggle by Mrs. Gloria Giralt de Garcia Prieto and Mr. Mauricio Garcia Prieto Hirlemann, who have had to face numerous abuses, refusals of protection and omissions by State officials. The integrity, braveness, effort and tenacity of the Garcia Prieto Giralt family members have become a commendable example for many other families who have been victims of similar crimes in El Salvador”. In such respect, the representatives received the apologies by the State, and undertook to transmit them to the Garcia Prieto family. Lastly, the Commission set much store by the expressions the State made.

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7. With reference to operative paragraph number five in the Judgment wherein the obligation of the State to bring to a proper conclusion the pending investigation into the homicide of Ramón Mauricio Garcia Prieto and into the threats and the harassment suffered by Mr. José Mauricio Garcia Prieto Hirlemann and Mrs. Gloria Giralt de Garcia Prieto (*supra* Having Seen Clause Number 1) is established, during the public hearing the State admitted that there had not been enough effective and earnest progress in the criminal investigations to find the instigators and perpetrators in the case of the murder of Ramón Mauricio Garcia Prieto Giralt, nor in the investigation into the threats and into the acts of intimidation or of coercion his family suffered. However, it pointed out that several steps had been taken in the investigation during the last quarter in the year 2009, but that there were still more to be taken for the purpose of identifying the instigators of the homicide, as well as those responsible for the threats and for the acts of harassment. In such sense, it stated that it was prepared to institute such domestic procedures as may be necessary in order to undertake the new and determined efforts which will further progress in the investigations.

8. In the course of the public hearing, the representatives pointed out that although other perpetrators were convicted, the alleged instigator has not yet been convicted, in spite of the clues filed with the *Fiscalía General de la República* [Office of the Attorney General for the Republic]. They added that specific steps the State had not taken in the course of the investigations were established in the Judgment, on which grounds they requested the Court to call upon the State to adopt the measures whereby it would be effectively complying with its obligation.

³ Cf. *Case of the “Five Pensioners” v. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 17, 2004, Considering Clause Number Five; *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Monitoring Compliance with Judgment. Order of the Court of November 19, 2009, Considering Clause Number Seven; and *Case of Ivcher Bronstein*. Monitoring Compliance with Judgment, *supra* note 2, Considering Clause Number Seven.

9. Likewise, in the course of the public hearing, the Inter-American Commission indicated that no steps have been taken following the Judgment about the investigation into the homicide of Ramón Mauricio García Prieto Giralt, and just a few ones regarding the threats, and that it set much store by the willingness of the State to further the investigation, which must be diligent and effective. Furthermore, it pointed out the lack of a coordination mechanism which would make compliance with the Judgment easier, which would be related to the provisional measures, for the investigating body reached at the domestic level conclusions contradicting facts already determined to be proven by the Court in its Judgment.

10. From the information and the observations the parties filed, this Tribunal notes that the State, after the Judgment in the instant case was delivered, has not taken action to effect a prompt, comprehensive and effective investigation, up to the standards set forth in international rules and case law⁴, in order to comply with operative paragraph number five in the Judgment. Therefore, the State has the obligation to step up its efforts and to take all pertinent action, forthwith, in order to further the investigations into the homicide and into the threats and acts of harassment suffered by Mr. José Mauricio García Prieto Hirlemann and by Mrs. Gloria Giralt de García Prieto. The Tribunal sets much store by what the State expressed, in the sense that it is fully prepared to deploy new and determined efforts to further the investigations pending. For which reasons, the Court deems it essential that the State file updated, detailed and complete information about how each one of the investigations and of the steps taken has been implemented.

11. As to operative paragraph number six in the Judgment, wherein the obligation the State has to publish in the Official Gazette and in another newspaper of broad national coverage the pertaining parts of the Judgment (*supra* Having Seen Clause Number 1) was established, the State reported that the publications ordered were effected within six months from the date notice of the Judgment was served upon it in "Issue Number 114, Tome Number 389, of the Official Gazette, which appeared on June 19, [2008]", [and in the daily news]paper "*El Mundo*" on May 13, [2008]". In such regard, during the public hearing the State expressed its decision to repeat the publication effected in the "*El Mundo*" daily newspaper, which was challenged by the representatives, avoiding repetition of the shortcomings pointed out with respect to the previous publication, and having the victims and their representatives take part in the design thereof.

12. In their comments, the representatives acknowledged that the publications ordered in the Judgment were made by the State; however, they indicated that none of these was effected in one of the two newspapers with higher circulation and greater national coverage, something which considerably reduced the social impact of the Judgment. They added that the parts published were difficult and almost impossible to read because of both the size of the font used as well as the pale tone in which it was printed, something which prevented such publication from complying with the intention it has, that is to say to make the Judgment accessible to the population. In the course of the public hearing, in view of the

⁴ Cf. *Case of Bámaca Velásquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Court of January 27, 2009, Considering Clause Number Thirty; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Monitoring Compliance with Judgment. Order of the Court of November 17, 2009, Considering Clause Number Eighteen; and *Case of Ivcher Bronstein v. Peru*. Monitoring Compliance with Judgment, *supra* note 2, Considering Clause Number Thirteen.

decision by the State to publish once again, the representatives stated they absolutely agreed with it.

13. The Commission pointed out that “it set[s] much store by [...] the publication of the Judgment in the Official Gazette No. 114, Tome No 379, on June 19, 2008 and in the *Diario El Mundo* [*El Mundo* Newspaper] on May 13, 2008”. In the course of the public hearing it pointed out that “it had no more observations to make, beyond welcoming the attitude of the State in such direction”.

14. From what the parties report regarding publication of the pertinent parts of the Judgment in the Official Gazette, the Tribunal deems the State to have complied with such aspect of operative paragraph number six in the Judgment. The Court considers the publication of the Judgment to be a satisfaction measure that must also be understood as a guarantee measure against repetition of the facts in the instant case, which must be known by society in El Salvador. Complying with such order is a part of the obligations the State has as the outcome of its having ratified the American Convention and recognized the competence of this Tribunal. In that sense, the Tribunal notes the willingness and the commitment of the State to publish the Judgment once more in a newspaper with wide national coverage without incurring in the shortcomings of the former publication, as well as the agreement therewith expressed by the representatives. For which reasons, el Tribunal sets much store by the willingness of the State to effectively comply with the obligation to publish the Judgment in another newspaper of wide national coverage, and urges it to submit information thereon.

15. As regards operative paragraph number seven in the Judgment, wherein the obligation the State has to provide the medical, psychiatric, or psychological assistance that may be needed by José Mauricio Garcia Prieto Hirlemann and Gloria Giralt de Garcia Prieto (*supra* Having Seen Clause Number 1), in the course of the public hearing the State pointed out that in fact the medical needs of the victims had not been fully taken into account, for which reason it expressed its willingness to comply with such obligation. In view of the foregoing, on January 10, 2010, a coordination meeting had been promoted with the *Ministerio de Salud Pública y Asistencia Pública* [Public Health and Emergency Assistance], for the purpose of learning which were the medical needs, the sufferings and the opinions of the victims and of proposing the ways and means of providing such services. The information obtained would be submitted to Public Health and Emergency Assistance authorities for them to decide on the ways and means to provide, free of charge, the medical and psychological services that meet the needs of the victims. It added that such action would be taken forthwith and it undertook to report periodically on the progress thereof. On the other hand, it pointed out that it was prepared to explore the possibility of providing alternative services different from the traditional health care services. As to providing psychiatric care, it indicated that no progress has been made, but that the matter is on the agenda, and that the State is interested in providing it in such manner as the Garcia Prieto family members may request.

16. The representatives pointed out that the State has not complied with this point in the Judgment. In the course of the public hearing they stated that the maladies of the victims were serious, for which reason they did not trust the services the national health system could provide. They further stated that the national health system wanted to start the treatment with a diagnosis, even though the victims already had one, and were under advanced treatment in the private system, for which reason they considered it was not

acceptable to start with the diagnosis all over again. They expressed that several of the doctors who have given treatment to the victims were part of the social security system and that the victims are not beneficiaries, for which reason they did not contribute to the social security system. In view of the foregoing, they proposed that an agreement be entered into between the social security system and the public health care system so that the victims may receive a high quality treatment.

17. The Commission indicated that it “note[d] the willingness the State had expressed [...] to provide the medical care the victims require, [...] the steps taken up to the moment for the purpose of providing the pertaining psychological care to the beneficiaries, as well as the limitations mentioned in the report regarding the actual operation of such aspect of this reparation measure”. In the course of the public hearing it stated that it expected the situation regarding provision of the health services to be cleared soon, for the victims already had a diagnosis and had been undergoing treatment for the last fifteen years.

18. It may be inferred from the statements by the parties that relations between the victims and the State are getting closer, in order to coordinate the provision of medical services and in such sense the Tribunal sets much store by the willingness the State has expressed to comply with the orders in the Judgment. However, this Tribunal notes that under paragraph 201 of the Judgment, such reparation measure was to be implemented as from the moment notice thereof was served, while more than three years have gone by since and compliance therewith is still pending. In such sense, the Court considers the State must adopt forthwith all such measures as may be necessary and effective in order to provide Mr. José Mauricio Garcia Prieto Hirlemann and Mrs. Gloria Giralte de Garcia Prieto such adequate medical, psychiatric or psychological treatment, free of charge, as may be determined considering their health needs, in agreement with the victims, including the medication prescribed. In order to monitor compliance with such obligation, it is necessary for the State to furnish detailed and updated information in such regard.

19. As to operative paragraphs number eight and number nine in the Judgment wherein the obligation the State has to pay compensation for non-pecuniary damages to Mr. José Mauricio Garcia Prieto Hirlemann and to Mrs. Gloria Giralte de Garcia Prieto, as well to pay the latter for costs and expenses (*supra* Having Seen Clause Number 1) is set forth, the State informed it had effected such payments, something which was confirmed by the representatives and by the Commission. In such respect, the Commission “set [...] much store by the State having paid the victims the sums of money the Court ordered in the [J]udgment”. Therefore, this Tribunal considers that the State has complied with operative paragraphs number eight and number nine in the Judgment.

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20. This Tribunal sets much store by the full compliance with operative paragraphs number eight and number nine in the Judgment on preliminary objections, the merits, reparations and costs delivered by the Court on November 20, 2007, as well as by the compliance in part with operative paragraph number five in the aforementioned Judgment, with reference to the publication of the pertinent parts of the Judgment in the Official Gazette, something which implies progress by the State in carrying out and implementing the judgments of the Court.

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21. That the Court will consider the general status of compliance with the Judgment (*supra* Having Seen Clause Number 1) once it receives the pertinent information on the points in the reparations with which compliance is still pending.

Therefore:

The Inter-American Court of Human Rights,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) of its Statute and 31(2) of its Rules of Procedure,

Declares:

1. That according to the statements in Considering Clauses numbers 14 and 19 of the instant Order, the State has complied with the following operative paragraphs in the Judgment:

(a) to publish once in the Official Gazette the operative paragraphs of the Judgment, as well as paragraphs 1 to 3, and 5 to 11, in Section I; and 76 to 160, in Section VIII, in the terms set forth in the Judgment (*operative paragraph number six in the Judgment delivered on November 20, 2007*);

(b) to pay Mr. José Mauricio Garcia Prieto Hirlemann and Mrs. Gloria Giralt de Garcia Prieto the amount established in the Judgment as compensation for non-pecuniary damages (*operative paragraph number eight in the Judgment delivered on November 20, 2007*); and

(c) to pay Mrs. Gloria Giralt de Garcia Prieto the amount established in the Judgment, for the costs and expenses incurred both in the domestic sphere and before the Inter-American system for the protection of human rights (*operative paragraph number nine in the Judgment delivered on November 20, 2007*).

2. That, as indicated in Considering Clauses numbers 10, 14 and 18 of the instant Order, the Court will keep the proceedings for monitoring compliance open in relation to the points with which compliance is still pending in the instant case, to wit:

(a) to bring to a conclusion the pending investigations into the homicide of Ramón Mauricio Garcia Prieto and into the threats and acts of harassment suffered by Mr. José Mauricio Garcia Prieto Hirlemann and Mrs. Gloria Giralt de Garcia Prieto (*operative paragraph number five in the Judgment delivered on November 20, 2007*).

(b) to publish once in a newspaper with wide national coverage the operative paragraphs in the Judgment, as well as paragraphs 1 to 3, and 5 to 11, in Section I; and 76 to 160, in Section VIII under the terms set forth in the Judgment (*operative paragraph number six in the Judgment delivered on November 20, 2007*);

(c) to provide, free of charge, the medical, psychiatric, or psychological care that may be required by Mr. José Mauricio García Prieto Hirlemann and by Mrs. Gloria Giralt de García Prieto (*operative paragraph number seven in the Judgment delivered on November 20, 2007*).

And Decides:

1. To call upon the State to take all such steps as may be necessary to put into effect and promptly comply with those points with which compliance is still pending as ordered by the Court in the Judgment delivered on November 20, 2007, pursuant to the provisions in Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights, no later than May 5, 2010, a report indicating all the measures adopted in order to comply with the reparations ordered by this Court with which compliance is still pending, as set forth in Considering Clauses numbers 10, 14 and 18, as well as in declarative paragraph number two, in the instant Order.

3. To request the Inter-American Commission on Human Rights and the representatives of the victims to submit their comments on the report by the State mentioned in the operative paragraph above, within four and six weeks, respectively, as of the date the report be received.

4. To continue monitoring the points with which compliance is still pending in the Judgment delivered on November 20, 2007.

5. To request the Secretariat of the Court to serve notice of the instant Order upon the State, upon the Inter-American Commission on Human Rights and upon the representatives.

Leonardo A. Franco
President in exercise

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
President in exercise

Pablo Saavedra Alessandri
Secretary