

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF FEBRUARY 22, 2011  
GARIBALDI v. BRAZIL  
MONITORING COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

1. The judgment on preliminary objections, merits, reparations and costs of September 23, 2009 (hereinafter "the judgment"), issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), in which it decided that:

[...]

6. The State must publish once in the official gazette, in another national newspaper with widespread circulation, and in a newspaper with extensive circulation in the state of Paraná, the cover page, Chapters I, VI and VII, without the footnotes, and the operative paragraphs of this judgment, and also publish this judgment in its entirety, for at least one year, on an appropriate official web site of the Federal State and of the state of Paraná taking into account the characteristics of the publication that the Court has ordered. The publications in the newspapers and on the Internet must be made within six and two months, respectively, of notification of this judgment, as stipulated in paragraph 157 hereof.

7. The State must conduct the investigation effectively and within a reasonable time, together with any proceedings that may be filed as a result of the investigation to identify, prosecute and, if appropriate, punish the authors of Mr. Garibaldi's death. Similarly, the State must investigate and, if applicable, punish possible functional misconduct committed by the public officials in charge of the investigation, as established in paragraphs 165 to 169 of this judgment.

8. The State must pay Iracema Garibaldi, Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi, the amounts established in paragraphs 187 and 193 of this judgment for pecuniary and non-pecuniary damage, within one year of notification hereof and as specified in paragraphs 200 to 203 of this judgment.

9. The State must pay Iracema Garibaldi the amount established in paragraph 199 of this judgment for reimbursement of costs and expenses, within one year of notification hereof and as specified in paragraphs 200 to 203 of this judgment.

[...]

2. The briefs of November 5 and 19, 2010, and their attachments, in which the Federative Republic of Brazil (hereinafter "the State" or "Brazil") forwarded the report on compliance and the attachments, respectively, in relation to monitoring compliance with the judgment issued by the Court in the instant case.

3. The brief of December 24, 2010, and the attachments, in which the representatives of the victims (hereinafter "the representatives") transmitted their observations on the State's report.

4. The Inter-American Commission on Human Rights did not forward any observations additional to those forwarded by the representatives.

## CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. Brazil has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since September 25, 1992, and, in accordance with Article 62 thereof, accepted the compulsory jurisdiction of the Court on December 10, 1998.
3. 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.<sup>1</sup>
4. In view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, the State must comply with them fully and promptly.
5. 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 internal law as justification for its failure to perform a treaty.<sup>2</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.<sup>3</sup>
6. 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

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1 Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003, Series C No. 104, para. 131; *Case of Valle Jaramillo v. Colombia. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of December 21, 2010, third considering paragraph, and *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 considering paragraph.

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, para. 35; *Case of the Miguel Castro Castro Prison v. Peru. Monitoring compliance with judgment*. Order of the acting President of the Inter-American Court of Human Rights of December 21, 2010, sixth considering paragraph, and *Case of Valle Jaramillo v. Colombia*, *supra* note 1, fourth considering paragraph.

3 Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights 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 Valle Jaramillo v. Colombia*, *supra* note 1, fourth considering paragraph.

applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>4</sup>

7. The States Parties to the Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. This obligation includes the State's duty to advise the Court of the measures adopted to comply with the Court's decisions in that judgment. The prompt implementation of this obligation to advise the Court on how each aspect ordered by the Court is being fulfilled is essential to assess the status of compliance in the case.<sup>5</sup>

*a) Regarding the obligation to publish the judgment*

8. Regarding the obligation to publish certain parts of the judgment, the State advised that it had published them, in the terms indicated by the Court, in the Official Gazette of February 10, 2010, and in the national newspaper, *O Globo*, on August 16, 2010. Furthermore, it advised that the state of Paraná had published parts of the judgment, in the terms indicated by the Court, in the following newspapers of this state: (a) *Hora H*, of May 7 to 9, 2010, and (b) *Umuarama Ilustrado*, *Diario Popular* (Curitiba), *Tribuna do Norte*, *Diário do Sudoeste*, *Hoje Notícias*, *Gazeta do Paraná*, *Jornal da Manhã* and *Diário Oficial do Estado*, all on May 7, 2010. Regarding the publication on official web pages, Brazil advised that the judgment had been published on the web pages of the Presidency's Human Rights Secretariat (hereinafter "Human Rights Secretariat"), the Court of Justice of the state of Paraná and the Public Prosecutor's Office of the state of Paraná.

9. The representatives considered that the sixth operative paragraph of the judgment had been complied with.

10. Based on the information provided by the parties, the Court observes that the State has complied with the obligation to make the publications ordered in the sixth operative paragraph of the judgment.

*b) Regarding the obligation to investigate the facts of the case and, as appropriate, prosecute and punish those responsible*

11. Regarding the obligation to conduct the investigation effectively and within a reasonable time, together with any proceedings that may be filed as a result of the investigation in order to identify, prosecute and, eventually, punish the authors of Mr. Garibaldi's death, established in the seventh operative paragraph of the judgment, the State advised that the police investigation was being conducted by the Police Headquarters of Loanda, a municipality in the state of Paraná. It added that the Public Prosecutor's office had reported in a note of May 10, 2010, that various procedures had been requested in the context of this investigation, including taking testimony

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<sup>4</sup> Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment 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 Valle Jaramillo v. Colombia*, *supra* note 1, fifth considering paragraph.

<sup>5</sup> 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 Moiwana Community v. Suriname. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2010, seventh considering paragraph, and *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, eighth considering paragraph.

from six individuals, among whom were two who were suspected of having committed the crime. In addition, the State advised that the Public Prosecutor's office had ordered that the investigation be concluded urgently.

12. The representatives reported that, although 12 years had elapsed since Mr. Garibaldi's murder, the authors had not yet been identified and punished. They also emphasized that, in its report on compliance with the judgment, Brazil had "not made any recent reference to the progress of the police inquiry, [merely] forwarding a copy of the testimony rendered in May 2009, [as a result] of the procedures authorized by the competent proceedings on April 20, 2009." They also indicated that, "based on the documents presented, almost two years have passed without the Brazilian State reporting any progress in the police investigation" and "by failing to provide specific information in that regard, Brazil is ignoring or disregarding the unjustified delay and continues to violate the right to due process of law." As a result of telephone calls made to the Loanda Police Headquarters, the representatives were informed that the police investigation had been sent to the Judiciary on November 16, 2010, and had been returned to the Police Headquarters on November 20, 2010, to comply with a request from the Public Prosecutor's office: the inclusion of Ailton Lobato's death certificate in the case file. Lastly, they stated that this represents "a total disregard of compliance with the [measure of reparation ordered by the Court] on the part of the [State]," and asked the Court to "require the State [...] to provide satisfactory information on compliance with [this] operative paragraphs."

13. The Inter-American Court observes that the procedures conducted in the investigation of the facts included taking testimony from four witnesses and one possible guilty party, which could make a positive contribution to the progress of the proceedings. However, the State's failure to provide information must be noted; the only document that has referred to this aspect is the "Detailed report of the investigation: Sétimo Garibaldi case" of the Public Prosecutor's office dated May 10, 2010, more than one year after the judgment had been handed down and 12 years after the victims' death. Furthermore, the Court observes that the State has advised that the procedures requested by the Public Prosecutor's office have not been completed.

14. The Court appreciates the effort of the representatives to seek recent information on the investigation and present it to the Court. However, despite the relevance of the information obtained by the representatives by telephone calls to the Loanda Police Headquarters, this does not obviate the State's responsibility to forward the Court detailed up-to-date information on compliance with the judgment.

15. Lastly, the Court recalls that more than 12 years have passed since Sétimo Garibaldi's death, and no substantial progress has been made towards clarifying the facts and identifying and, as appropriate, punishing those responsible. Consequently, Brazil must adopt the necessary measures and actions to ensure full and effective compliance with this measure of reparation. In addition, within the time frame indicated in the third operative paragraph of this order, it must forward complete and detailed information on compliance with this obligation.

*c) Regarding the obligation to compensate the damage and reimburse costs and expenses*

16. With regard to the obligation to pay the compensation for pecuniary and non-pecuniary damage to the victim's next of kin and to reimburse costs and expenses, established in the eighth and ninth operative paragraphs of the judgment, the State advised that on September 22, 2010, Decree No. 7,307/10 was issued, authorizing the Human Rights Secretariat to comply with the Court's judgment, especially with regard to payment of the compensation and reimbursement of costs and expenses to the victims. It also advised that it is still awaiting the funds to make the payment and undertook to inform the Court when the deposits were made. The State provided a copy of the said decree, authorizing the payment of US\$52,142.86 (fifty-two thousand one hundred and forty-two United States dollars and eighty-six cents) to Iracema Garibaldi and US\$21,142.86 (twenty-one thousand one hundred and forty-two United States dollars and eighty-six cents) to each of Mr. Garibaldi's six children.

17. The representatives advised that, in December 2009, the Human Rights Secretariat contacted one of the petitioner organizations to obtain the banking details of Mr. Garibaldi's next of kin so that the payments for the reparations could be made; this raised the expectations of the beneficiaries that the deposits would be made shortly after. However, even though the time frame for complying with the judgment expired on November 5, 2010, the representatives advised that, at the date they prepared their observations on the State's report, Brazil had not paid the reparations established by the Court. On telephoning the Human Rights Secretariat, the petitioners were informed that insufficient financial resources were available to make the deposits for all the reparations, and only the compensation owed to Iracema Garibaldi could be paid; also that the State was awaiting the approval of a bill that would authorize a supplementary credit. Lastly, the representatives emphasized that the State's obligation must be complied with entirely and promptly and urged the Court to request the State to make the deposit ordered, "not delaying any further in fulfilling the expectations of a whole family."

18. The Court observes that the State issued Decree No. 7,307 in September 2010 authorizing the payments corresponding to the pecuniary and non-pecuniary damage ordered in the judgment. Nevertheless, the information before the Court reveals that, to date, after the period of one year from delivery of the judgment has expired, these payments have not yet been paid, and the information provided by the State does not reveal any specific actions to implement the contents of the decree. Furthermore, the State did not present information on the payment to Iracema Garibaldi for reimbursement of costs and expenses, in accordance with the ninth operative paragraph of the judgment.

19. Based on the above, the Court finds that the time frame has expired and the payments were not made opportunely. Consequently, the reparations ordered in the eighth operative paragraph and the reimbursement of costs and expenses ordered in the ninth operative paragraph of the judgment are pending compliance. The Court therefore requests the State to adopt the necessary measures and actions to comply fully and effectively with these measures of reparation, including the interest payments arising from the delay, in accordance with paragraph 203 of the judgment, and to advise the Court in the terms of the third operative paragraph of this order.

**THEREFORE:**

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

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 31 and 69 of its Rules of Procedure,<sup>6</sup>

**DECLARES THAT:**

1. As indicated in the tenth considering paragraph of this order, Brazil has complied wholly with the obligation to publish once in the official gazette, in another national newspaper with widespread circulation, and in a newspaper with extensive circulation in the state of Paraná, the cover page, Chapters I, VI and VII, without the footnotes, and the operative paragraphs of this judgment, and also to publish this judgment in its entirety, for at least one year, on an appropriate official web site of the Federal State and of the state of Paraná taking into account the characteristics of the publication that the Court ordered (*sixth operative paragraph of the judgment*).

2. As indicated in the fifteenth and nineteenth considering paragraphs of this order, the Court will keep the procedure of monitoring compliance with judgment open with regard to the paragraphs that establish the State's obligation to:

(a) Conduct the investigation effectively and within a reasonable time, together with any proceedings that may be filed as a result of the investigation to identify, prosecute and, as appropriate, punish the authors of Mr. Garibaldi's death. Similarly, the State must investigate and, if applicable, punish possible misconduct in the exercise of their functions committed by the public officials in charge of the investigation, as established in the judgment (*seventh operative paragraph of the judgment*);

(b) Pay Iracema Garibaldi, Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi, the amounts established in paragraphs 187 and 193 of the judgment for pecuniary and non-pecuniary damage, as specified in paragraphs 200 to 203 of the judgment (*eighth operative paragraph of the judgment*), and

(c) Pay Iracema Garibaldi the amount established in paragraph 199 of the judgment for reimbursement of costs and expenses, within one year of notification thereof and as specified in paragraphs 200 to 203 of the judgment (*ninth operative paragraph of the judgment*).

**AND DECIDES:**

3. To declare that the measure of reparation ordered by the Inter-American Court of Human Rights in the sixth operative paragraph of its judgment on preliminary objections, merits, reparations and costs of September 23, 2009, has been complied with in accordance with the tenth considering paragraph, and the first declarative paragraph of this order.

4. To require the State, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights, to adopt all necessary measures to comply promptly and effectively with the measures ordered in the judgment that remain pending

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<sup>6</sup> Rules of Procedure of the Court approved at its eight-fifth regular session held from November 16 to 28, 2009.

compliance, in accordance with the fifteenth and nineteenth considering paragraphs and the second declarative paragraph of this order.

5. To request the State to present to the Inter-American Court of Human Rights, by May 1, 2011, at the latest, a report indicating the measures adopted to comply with the reparations ordered by this Court that remain pending.

6. To request the Inter-American Commission on Human Rights and the representatives of the victim and his next of kin to submit any observations they deem pertinent on the State's report mentioned in the preceding operative paragraph within four and six weeks of receiving it, respectively.

7. To continue monitoring the aspects pending compliance of the judgment on merits, reparations and costs of September 23, 2009.

8. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims.

Diego García-Sayán  
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary