

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF SEPTEMBER 22, 2006**

CASE OF LOAYZA-TAMAYO V. PERU

MONITORING COMPLIANCE WITH JUDGMENT *

HAVING SEEN:

1. The Judgment on the merits delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or the "Inter-American Court") in the instant case on September 17, 1997.

2. The Judgment on reparations delivered by the Court on November 27, 1998.

3. The Judgment on Interpretation delivered by the Inter-American Court in the instant case on June 3, 1999.

4. The Order of the Court of June 1, 2001 on compliance with judgment in the Cases of Castillo-Páez, Loayza-Tamayo, Castillo-Petruzzi *et al.*, Ivcher-Bronstein and the Constitutional Court, whereby the Court decided:

1. To take note of the compliance by the State of Peru with the judgments on competence of September 24, 1999, in the *Constitutional Court and Ivcher Bronstein cases* and of the progress made, up until the date that this order was issued, in compliance with the judgments delivered by the Court in the *Castillo Páez, Loayza Tamayo, Castillo Petruzzi et al., Ivcher Bronstein and Constitutional Court cases*.

[...]

5. The Order on compliance with judgment rendered by the Court on November 27, 2002, whereby it decided:

1. That the State ha[d] a duty to adopt all necessary measures to comply effective[ly] and promptly with the judgment on reparations of November 27, 1998, delivered by the Inter-American court of Human Rights in the case of Loayza-Tamayo, as established in Article 68(1) of the American Convention on Human Rights.

[...]

* Judge Oliver Jackman did not take part in the deliberations on and signing of this Order as he advised the Court that, for reasons beyond his control, he would be unable to be present at the Seventy-second Regular Session of the Court.

6. The Order on compliance with judgment rendered by the Court on November 27, 2003, the sixth, seventh and eighth considering clauses of which stated that:

6. [...] in the course of monitoring compliance with the judgment on reparations in this case, the Court [...] verified that the State paid the compensation ordered in favor of the victim and her next of kin and the fees and expenses, in accordance with the fourth and seventh operative paragraphs of the judgment on reparations [...].

7. [...] María Elena Loayza Tamayo ha[d] been reinstated in educational center No. 2057 and in the College of Dramatic Art of the Ministry of Education [...].

8. [...] the Court consider[ed] it essential that the State [w]ould provide information to the Court on progress in compliance with the judgment on reparations, in particular, as regards:

a) The reinstatement of Mrs. Loayza Tamayo in the teaching sector in public institutions and the measures taken to ensure that the amount of her salary and other benefits [would be] equivalent to the remuneration she was receiving for these activities in the public and private sector at the time of her detention (*first operative paragraph of the judgment on reparations of November 27, 1998*);

b) Payment of the salary and work-related benefits to which María Elena Loayza Tamayo is entitled for uninterrupted employment and the guarantee of full enjoyment of her retirement benefits (*first and second operative paragraph of the judgment on reparations of November 27, 1998*);

c) The adoption of measures of domestic law to ensure that no adverse decision delivered in the proceedings against Mrs. Loayza Tamayo in the domestic courts [would] ha[ve] any legal effect whatsoever (*third operative paragraph of the judgment on reparations of November 27, 1998*); and

d) The investigation of the facts of the case, and the identification and punishment of those responsible (*sixth operative paragraph of the judgment of November 27, 1998*).

In that regard, the Court decided as follows:

1. To urge the State to adopt all necessary measures to comply effectively and promptly with the judgment on reparations of November 27, 1998, delivered by the Inter-American Court of Human Rights in the *Loayza Tamayo case*, as established in Article 68(1) of the American Convention on Human Rights.

7. The Order of the Inter-American Court of March 3, 2005, whereby it declared:

1. That, pursuant to Considering clause No. 8 of this Order, the State has fully complied with the sixth operative paragraph of the Judgment on the merits delivered by the Court on September 17, 1997, and the fourth and seventh operative paragraphs of the Judgment on reparations delivered by the Court on November 27, 1998, as to payment to the victim and the victim's next of kin of fair compensation and any fees and expenses they may have incurred in the instant case.

2. That it [would] keep open the proceeding for monitoring compliance with the aspects pending fulfillment in the instant case [...]

Furthermore, the Court decided:

1. To call upon the State to adopt all necessary measures to comply effective[ly] and promptly with the pending measures ordered by the Court in the Judgment on reparations, as well as the Order of November 27, 2003 and this Order, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To call upon the victim's representative and the Inter-American Commission to submit to the Inter-American Court their observations to the State's report of February 18, 2005 by March 30 and April 13, 2005, respectively.

3. To call upon the State to submit to the Inter-American Court, by May 23, 2005, a report stating all such measures as it may have adopted to comply with those reparations ordered by this Court which are still pending fulfillment, as established in Considering clause No. 10 and the first operative paragraph of this Order. The Court request[ed] that, specifically, the State report on the domestic legal measures taken to guarantee that no adverse decision delivered in the civil proceedings against Loayza-Tamayo will have any legal effect whatsoever, and to provide the court order or file proving that the criminal, police and judicial records of Loayza-Tamayo have been actually expunged.

4. To request that the victim's representative and the Inter-American Commission submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of said report.

5. To continue monitoring the pending aspects of the Judgment on reparations.

[...]

8. The brief filed by the victim's representative (hereinafter "the representative"), dated April 6, 2005, whereby she submitted her observations to the report of the State of Peru (hereinafter "the State" or "Peru") of February 18, 2005, further to the request of the Court in the second operative paragraph of the Order of March 3, 2005 (*supra* Having Seen clause No. 7). Through said brief, the representative insisted that Peru "has not yet complied with any of the measures set by the Court in its most recent orders on compliance," which amounts to "the continued non-compliance with the Court's judgment on reparations and a flagrant violation of the international law rules ratified by the State."

9. The April 13, 2005 brief of the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission"), whereby it submitted its comments on the report filed by the State on February 18, 2005, further to the request of the Court in the second operative paragraph of the Order of March 3, 2005 (*supra* Having Seen clause No. 7). In this regard, the Commission acknowledged the State's efforts "with a view to taking all such steps as may be relevant to secure" compliance with the Court's orders. However, it noted that the State has not yet complied with those obligations that are still pending fulfillment under the Judgment on reparations, nor has it provided information on the adoption of measures that are truly effective in securing compliance therewith.

10. The June 6, 2005 letter of the Secretariat of the Court (hereinafter "the Secretariat"), whereby, further to the instructions of the President of the Court (hereinafter "the President"), it insisted that the State was to file a report on compliance, pursuant to the third operative paragraph of the Court's Order of March 3, 2005 (*supra* Having Seen clause No. 7). Repeat requests were made on July 7 and September 5, 2005. In the latter letter, the State was given a final deadline expiring on October 3, 2005 for submission of the aforementioned report. The State has failed to file the requested report.

11. The victim's communication of October 3, 2005 and the Appendixes thereto, whereby the victim advised the Court of the difficulties and inconveniences she is currently suffering due to the State's failure to comply with the judgments on the Merits and on Reparations.

CONSIDERING

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.
2. That Peru has been a State Party to the American Convention since July 28, 1978, and that it accepted the binding jurisdiction of the Court on January 21, 1981.
3. That, pursuant to Article 68(1) of the American Convention, "[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, States are required to guarantee implementation of the Court's rulings at the domestic level.¹
4. That, given the final and not-subject-to-appeal nature of the Court's judgments, as established in Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), said judgments are to be promptly and fully complied with by the State.
5. That the obligation to comply with the judgments of the Court conforms to a basic principle of the law of the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility.² The treaty obligations of States Parties are binding on all State powers and organs.
6. That the States Parties to the American Convention are required to guarantee compliance with the provisions thereof and secure their effects (*effet utile*) at the domestic law level. This principle applies not only in connection with the substantive provisions of human rights treaties, but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.³

¹ Cf. *Case of the Five Pensioners*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 3; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 3; *Case of the "Juvenile Reeducation Institute."* Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 3.

² Cf. *Case of the Five Pensioners*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 7; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 5; *Case of the "Juvenile Reeducation Institute."* Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 5.

³ Cf. *Case of the Five Pensioners*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 8; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 6; *Case of the "Juvenile Reeducation Institute."* Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 6.

7. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Court. This obligation includes the State's duty to report on the measures adopted to comply with such decisions of the Court. The duty to provide information is a two-fold obligation effective compliance with which calls for the formal submission of a document within the prescribed time period and a specific, accurate, current and detailed material reference to the issues around which such obligation revolves.⁴ Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance with the judgment as a whole.⁵

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8. That, pursuant to the Court's Order of March 3, 2005 (*supra* Having Seen clause No. 7), the State was required to submit a report by May 23, 2005, stating all measures adopted to comply with the reparations ordered by the Court and which were thus far pending compliance.

9. That, since such date, the State has not provided any information regarding compliance with the Judgments of the Court, in spite of the repeated requests to that effect (*supra* Having Seen clause No. 10).

10. That the State's position in that regard conflicts with its duty to comply with and report to the Inter-American Court on the measures adopted to carry out, domestically, the measures of reparation ordered by the Court, while denying the victims and the beneficiaries of such reparations their right to a fair international trial.⁶

11. That, in the course of monitoring comprehensive compliance with the Judgments on the merits and on reparations delivered in the instant case, and having analyzed the information received, the Court found that the State has not provided sufficient information on the following aspects that are still pending compliance:

- a) The reinstatement of María Elena Loayza-Tamayo in the teaching sector in public institutions, on the understanding that the amount of her salary and other benefits is to be equal to the remuneration she was receiving for these activities in the public and private sector at the time of her detention (*first operative paragraph of the Judgment on Reparations of November 27, 1998*);

⁴ Cf. *Case of the Five Pensioners*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 14; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 7; *Matter of the Mendoza Prisons*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering clause No. 14.

⁵ Cf. *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 7.

⁶ Cf. *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 11; *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 130.

- b) The guaranteeing of her full retirement benefits, including those owed for the period transpired since the time of her detention (*second operative paragraph of the Judgment on Reparations of November 27, 1998*);
- c) The adoption of all domestic legal measures necessary to ensure that no adverse decision delivered in proceedings against Loayza-Tamayo in the civil courts has any effect whatsoever (*third operative paragraph of the Judgment on Reparations of November 27, 1998*);
- d) The adoption of all domestic legal measures necessary to adapt Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention (*fifth operative paragraph of the Judgment on Reparations of November 27, 1998*); and
- e) The investigation of the facts in the instant case, the identification and punishment of those responsible for those acts, and the adoption of all necessary domestic legal measures to ensure that this obligation is discharged (*sixth operative paragraph of the Judgment on Reparations of November 27, 1998*).

12. That the Court is concerned about the fact that, even though almost eight years have already elapsed since the Judgment on reparations was delivered in the instant case (*supra* Having Seen clause No. 2), it has not yet been complied with in its entirety.

13. That the Court will assess the general status of compliance with the Judgments on the merits and on reparations, as well as the Orders delivered in the instant case (*supra* Having Seen clauses No. 4, 5, 6 and 7) once it is provided with the relevant information on the measures pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions and pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of its Statute and 29(2) of its Rules of Procedure,

DECLARES:

1. That it will keep open the proceeding for monitoring compliance with the aspects pending fulfillment in the instant case, namely:

- a) The reinstatement of María Elena Loayza-Tamayo in the teaching sector in public institutions, on the understanding that the amount of her salary and other benefits is to be equal to the remuneration she was receiving for these activities in the public and private sector at the time of her detention;

- b) The guaranteeing of her full retirement benefits, including those owed for the period transpired since the time of her detention;
- c) The adoption of all domestic legal measures necessary to ensure that no adverse decision delivered in proceedings against Loayza-Tamayo in the civil courts has any effect whatsoever;
- d) The adoption of the internal legal measures necessary to adapt Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention, and
- e) The investigation of the facts of the instant case, identifying and punishing those responsible for those acts, and the adoption of all necessary domestic legal measures to ensure that this obligation is discharged.

AND DECIDES:

1. To call upon the State to adopt such measures as may be necessary to promptly and effectively comply with the pending measures ordered by the Court in the Judgments on the merits and reparations and the orders issued in the instant case (*supra* Having Seen clauses No. 4, 5, 6 and 7) pursuant to Article 68(1) of the American Convention on Human Rights.
2. To request that, by January 20, 2007, the State submit to the Inter-American Court a detailed report specifying all such measures as may have been adopted to comply with the reparations ordered by this Court and which are still pending compliance (*supra* first declarative paragraph), and to submit the relevant supporting documents.
3. To call upon the representatives of the victim and the Inter-American Commission to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.
4. To continue monitoring those aspects of the Judgments on the merits and on reparations that are still pending compliance.
5. To request that the Secretariat of the Court notify this Order to the State, the Inter-American Commission and the victim's representatives.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary