

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 28, 2010**

**CASE OF HELIODORO PORTUGAL V. PANAMA
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on the preliminary objections, merits, reparations and legal 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 12, 2008, whereby it ordered the State to:

10. [...] pay Graciela De León, Patria Portugal and Franklin Portugal, the amount established in paragraph 233 of [...] judgment, as compensation for pecuniary damage, within one year of notification of the judgment, in the terms of paragraphs 233 and 268 to 272 [t]herein.

11. [...] pay Graciela De León, Patria Portugal and Franklin Portugal, the amounts established in paragraph 239 of [...] judgment, as compensation for non-pecuniary damage, within one year of notification of the judgment, in the terms of paragraphs 239 and 268 to 272 [t]herein.

12. [...] investigate the facts that gave rise to the violations in the instant case, and identify, prosecute and, if applicable, punish those responsible, in the terms of paragraphs 243 to 247 of [...] judgment.

13. [...] publish, once, in the official gazette and in another newspaper with widespread circulation, Chapters I, III, VI, VII, VIII, IX and X of [...] judgment, without the corresponding footnotes, and its operative paragraphs, within six months of notification of the judgment, in the terms of paragraph 248 [t]herein.

14. [...] carry out a public act acknowledging its international responsibility in relation to the violations declared in this judgment, within six months of notification of the judgment, in the terms of paragraph 249 [t]herein.

15. [...] provide the medical and psychological care required by Graciela De León de Rodríguez, Patria Portugal and Franklin Portugal, free of charge and immediately, through its specialized health care institutions, in the terms of paragraph 256 of the judgment.

16. [...] define the offenses of forced disappearance of persons and torture within a reasonable time, in the terms of paragraphs 181, 189, 192 to 207, 213 to 215 and 259 of [...] judgment;

17. [...] make the payment for reimbursement of costs and expenses, within one year of notification of the judgment, in the terms of paragraphs 267 to 272 [t]hereof.

2. The briefs of February 25, March 10 and 18, April 13 and 23, 2009, and May 26, 2010, by which the Republic of Panama (hereinafter, the "State" or "Panama") informed on the compliance with the Judgment.

3. The communications of February 5 and May 14, 2009, and May 27, 2010, by which the victims' representatives (hereinafter, the "representatives") presented the observations to the information submitted by the State.

4. The brief of May 29, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted its observations to the report of the State and the observations presented by the representatives.

5. The Order of the Court's President of April 20, 2010, by which a private hearing was convened to be held on May 26, 2010, within the framework of the LXXXVII Ordinary Period of Sessions of the Tribunal, so that the Inter-American Court receives from the State complete and updated information on the compliance with all the measures of reparation ordered in the Judgment delivered in the instant case and listens to the respective observations of the Inter-American Commission and the representatives.

6. The private hearing held on May 26, 2010, at the seat of the Tribunal¹.

CONSIDERING THAT:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. Panama has been a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") since June 22, 1978, and that it accepted the binding jurisdiction of the Court on May 9, 1990.

3. Pursuant to article 67 of the American Convention, State parties must fully comply with the judgments entered by the Court in time fashion. Furthermore, 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". Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level².

4. The obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, endorsed by international case-law, under which States are required to fulfill 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 from their pre-established International responsibility. Treaty obligations of States Parties are binding on all State powers and organs³.

5. The States Parties to the Convention must ensure compliance with its conventional provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected

¹ To this hearing, there appeared, on behalf of the State of Panama: Director of the Human Rights Department of the Bureau of Legal Affairs and Treaties of the Ministry of Foreign Affairs, Mariela Vega de Donoso; Lawyer of the Bureau of Legal Affairs and Treaties of the Ministry of Foreign Affairs, Anethe Vergara; and Ambassador of Panama to Costa Rica, Ambassador José Javier Mulino. On behalf of the Inter-American Commission on Human Rights: Specialist of the Executive Secretary, Lilly Ching Soto. On behalf of the victim's representatives: Patria Portugal, Alejandra Nuño, Marcela Martino, Gisela De León and Marcia Aguiluz, of the Center for Justice and International Law, CEJIL.

² See *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para 60; *Case of Cesti Hurtado V Perú.*, Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 4, 2010, considering clause three and case of *El Amparo V. Venezuela*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering Clause three.

³ See International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (articles 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994, Series A N^o.14, para. 35; *Case of Cesti Hurtado*, *supra* note 2, Considering clause five; and case of *El Amparo*, *supra* note 2, considering clause five.

rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties⁴.

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6. As to the obligation to pay Graciela De León, Patria Portugal and Franklin Portugal, the compensations for pecuniary and non-pecuniary damage and the reimbursement for legal costs and expenses (*operative paragraphs ten, eleven and seventeen of the Judgment*), the State informed that "through the Ministry of Economy and Finance [...] it proceeded to make the payment of [said] compensations [and] legal costs and expenses".

7. The representatives confirmed that "the payments [...] were duly made to the members of the Portugal family".

8. The Commission "note[d] that this obligation was timely complied with by the Panamanian State".

9. As a result, this Tribunal declares the full compliance with the State's obligation to pay Graciela De León, Patria Portugal and Franklin Portugal, the compensations for pecuniary and non-pecuniary damage and the reimbursement of legal costs and expenses, according to the terms of Operative Paragraphs ten, eleven and seventeen of the Judgment.

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10. As to the duty to publish the pertinent parts of the Judgment in the official gazette and in another newspaper with widespread circulation (*operative paragraph thirteen of the Judgment*), the State forwarded copies of the publication of the pertinent parts of the Judgment in the Official Gazette of February 6, 2009 and in Panama América newspaper of February 28, of that same year.

11. The representatives pointed out that "[a]fter making a thorough analysis of each one of [the] publications [...] they consider that the State [...] has fully complied with [the] measure".

12. The Commission "note[d] that this obligation was duly complied with by the State".

13. Based on the foregoing, the Tribunal notes that the State has furnished documentation evidencing the publication of the pertinent parts of the Judgment in the Official Gazette of Panama and in another newspaper of widespread circulation; therefore, the Tribunal declares the full compliance with this obligation.

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14. As to the State's obligation to carry out a public act acknowledging its international responsibility in relation to the violations declared in this judgment (*operative paragraph fourteen of the Judgment*), the State informed that "on February 6, 2009, at the *salon de la Nacionalidad* of the Ministry of Interior and Justice", it was held the ceremony of "Recognition of International Responsibility for the violations declared in the Judgment". "The relatives of Heliodoro Portugal, the President of the Supreme Court of Justice, the Attorney General and the Vice-President of the National Assembly

⁴ See *Case of Ivcher Bronstein V Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Cesti Hurtado*, *supra* note 2, Considering clause six; and *case of El Amparo*, *supra* note 2, considering clause six.

attended the ceremony". The corresponding statement "was made by the Minister of Interior and Justice in the presence of prosecutors, state officials and the public in general". According to the State, "said act was covered by all the print and broadcast media". The representatives expressed some criticism in relation to this act, because the event was not consulted with them with due advance notice, Mrs. Patria Portugal was not invited to take the floor and also, because of the terms stated in the act of recognition. Moreover, the Commission valued the ceremony but "it note[d] that some aspects of the way in which it was conducted" were not "suitable to achieve the main purpose for which it was ordered, that is, the moral reparation".

15. Furthermore, the State indicated that on May 24, 2010, it was shown "the plaque with the name of Heliodoro Portugal" that is placed on the street named after him. According to the State, the street is at "Santa Ana *Corregimiento*, place where Mr. Portugal carried out his political activity". The State indicated that the Vice-President and Chancellor of Panama, during the speech, "admitted that what happened" is "terrible for the history" of the country, which "as well as many other cases, had not been resolved" and "justice has not been dealt out in such cases, in order to guarantee the non-repetition of these facts again". The State indicated that the Vice-President pointed out in such act that "the Panamanian State apologizes for the acts committed, which triggered the disappearance, torture, abuses, violation of fundamental rights and death, in this specific case of Mr. Heliodoro Portugal". The Commission "value[d] the naming of a public street after Mr. Portugal, a street that is located in a very important area for the family".

16. Moreover, the representatives informed about an event organized on May 27, 2010, at *Salón Amarillo* of the *Palacio de las Garzas*, that is, the Presidential House. Said act was presided over by the President of the Republic, together with the State Ministries, the First Lady of the Republic, the President of the Supreme Court of Justice and the Attorney General. During the event, the President made reference to the Judgment delivered by the Court, to the violations committed to the detriment of Mr. Heliodoro Portugal and to the suffering of his family. In addition, in said event, the President of the Republic apologized, on behalf of the State, not only for the violations committed against Mr. Portugal but also for the other victims of the military dictatorship and he also undertook to render justice in those cases. The event was, also, broadcasted live on the national television network. In this respect, the representatives indicated that "the organization and announcement for the event" were "previously coordinated with Portugal family, taking into account their expectations". Furthermore, they mentioned that "the Portugal family is satisfied with the act of recognition" since "it was formally carried out and complied with the purpose of honoring the memory of Heliodoro Portugal".

17. The Court considers that the unveiling of the plaque in an important street named after Heliodoro Portugal because of the political activity he carried out in that street, has a clear value for and provides reparation to his next-of-kin, for the purpose of preserving the historical memory of the human rights violations committed and ensuring that such facts are never repeated⁵. Furthermore, the Court notes that in the ceremony in which the plaque was unveiled, the High Official, who fulfills the duties of Vice-President and Chancellor of Panama, apologized for the violation of the rights committed against the victim. In addition, the event carried out on May 27, 2010, was honored by the presence, consent and participation of the victims, included an apology, recognition of responsibility consistent with the terms established in the Judgment on the merits and a commitment to avoid impunity in the instant case. Based on the foregoing and the information furnished by the parties, the Court highlights the importance of these acts

⁵ *Case of Goiburú et al V. Paraguay. Merits, Reparations and Legal Costs.* Judgment of September 22, 2006. Series C No. 153, para. 53; *Case of La Cantuta V. Peru.* Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of November 20, 2009, considering clause eighteen and case of Goiburú et al V. Paraguay. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights, of November 19, 2009; Considering clause twenty-four.

and deems that the State has fully complied with operative paragraph fourteen of the Judgment.

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18. As to the duty to investigate the facts that gave rise to the violations in the instant case, and identify, prosecute and, if applicable, punish those responsible (*operative paragraph twelve of the Judgment*), the State "admit[ted] that there has been a delay in the investigation of the facts". It pointed out that in 2009, the State "continued conducting preliminary proceedings, taking the preliminary examination statements of [four alleged responsible], legal aid [...] was sent to the United States of America [to] take [the] preliminary examination statement of Manuel Antonio Noriega and four affidavits were taken from [another three alleged responsible]". The State further alleged that on March 8, 2010, "a criminal action was initiated against the defendants", that the case is being tried by "the Second Superior Tribunal of Justice" and that "the corresponding ordinary hearing has been convened for July 7, 2010." Moreover, the State emphasized that "the Criminal Chamber of the Supreme Court of Justice declared that the fact under study is a non-extinguishable crime". Furthermore, the State indicated that "the next-of-kin of Mr. Heliodoro Portugal [...] had had access to the case file of the proceeding, [had been] listened to and, by means of [...] affidavits, had presented petitions that have been solved; in addition, they were notified of the transfer of the proceedings to the Second Superior Tribunal of Justice [and] of the order to prosecute of said court". The State committed to forward "daily reports regarding the procedures and progress made in the criminal action, as well as the judgments or resolutions issued by the corresponding judicial instances".

19. The representatives indicated that the "State only presents lists of proceedings conducted [without] specifying the existence of a line of investigation [...] to explain the relationship between the different steps [taken]". According to the representatives, "the information presented does not allow establishing the existence of the real progress made in the determination of what truly happened". Moreover, they pointed out that "the State did not adopt any method to constantly inform the Portugal family of what kind of steps are being taken" and that "they were only notified of two acts, including the summons to trial", which did not include "other violations that were determined by the Court". Furthermore, "they are unfamiliar with any investigation conducted regarding other alleged responsible for the facts" and they consider that "most of the procedures informed [by the State] are [those] that were brought before the Court during the proceedings of the merits of the case". According to Mrs. Patria Portugal, "[she] was the one who expedited the proceeding all these years, not the State" and "it is thanks to [her and her family], because they told this to the Public Prosecutor's Office, why each one of [the] people had been convened to render a statement".

20. The Commission "consider[ed] that it was necessary to effectively administer justice in this case within a reasonable term, in light of the excessive delay, which has been admitted by the State and acknowledged by the Court in its Judgment". To this end, it emphasized that "the expediting of the proceedings by the Portugal family" has been a constant in the investigation.

21. In this respect, the Tribunal has held in its case-law that according to the obligation to guarantee contained in article 1(1) of the American Convention, the State has the duty to avoid and fight impunity, which has been defined by the Court as "the overall failure to investigate, search, arrest, prosecute and convict those responsible for violations of the rights protected by the American Convention"⁶. Concerning this matter,

⁶ See Case of the "White Van" (*Paniagua Morales et al*) v. Guatemala, Merits. Judgment of March 8, 1998. Series C, N° 37, para. 173; Case of El Amparo, supra note 2, considering clause eighteen; and Case of

the Court has held that the State “has the obligation to fight impunity by using all the legal means at its disposal, since impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives⁷.” This obligation implies the duty of States Parties to the Convention to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights⁸. Hence, considering its relevance, the obligation to investigate must be discharged in a certain way, so as to be in line with the standards established by international rules and the case-law that set forth it should be a prompt, thorough, impartial and independent investigation⁹.

22. Even though the State has furnished information regarding a series of procedural steps taken and other actions in process to investigate into the facts that resulted from the violations determined in the Judgment and, in this way, identify and, if applicable, punish the responsible, there is no evidence in the case file that allows this Tribunal to assess the status of compliance with this aspect. Moreover, the State refers to decisions already assessed by the Tribunal upon the delivery of the Judgment, like the decision of the Supreme Court of Justice of March 2, 2004, according to which the criminal action in the case of the disappearance of Mr. Heliodoro Portugal is non-extinguishable. Therefore, the Court requires sufficient information to be able to determine the due diligence in the compliance with the order to investigate issued by the Court.

23. Based on the foregoing, it is essential for the State to present organized, detailed, complete and updated information of the investigations in process and the steps taken since the delivery of the Judgment up to the present, forwarding copies of the relevant parts to the respective case files. Moreover, the State must ensure the participation of the victims in all the pertinent procedural stages, without making them responsible of expediting the investigation.

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24. As to the duty to provide the medical and psychological care required by Graciela De León de Rodríguez, Patria Portugal and Franklin Portugal, immediately and free of charge, through its specialized health care institutions (*operative paragraph fifteen of the Judgment*), the State indicated that “the medical and psychological care for the Portugal family has always been available to them”. In this way, the State “informe[d] that the Ministry of Health follows specific instructions to provide medical care to the Portugal family in compliance with the Judgment” but that “the Portugal family has not requested [said] benefit [...], since they have never made new appointments.” Hence, the State pointed out that “by means of note of February 9, 2009,” “it formally repeated to Mrs. Patria Portugal [...] that instructions have been given and the medical and psychological treatment that the three next-of-kin would receive, have been coordinated with Santo Tomas Hospital”. In addition, the State mentioned

Ivcher Bronstein V. Peru, Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights, of November 24, 2009; Considering clause twelve.

⁷ See Case of the “White Van” (Paniagua Morales et al), supra note 6, para. 173; Case of El Amparo, supra note 2, considering clause eighteen; and Case of Ivcher Bronstein, supra note 6, considering clause twelve.

⁸ See *Case of Velásquez Rodríguez V. Honduras*. Merits. Judgment of July 29, 1998. Series C No. 4, para. 166; Case of El Amparo, supra note 2, considering clause eighteen; and Case of Ivcher Bronstein, supra note 6, considering clause twelve.

⁹ See *Case of Bámaca Velásquez V. Guatemala. Monitoring Compliance with the Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, considering clause thirty; Case of Ivcher Bronstein, supra note 6, considering clause twelve; and case of Montero Aranguren et al (Retén de Catia) V. Venezuela. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights, of November 17, 2009; Considering clause eighteen.

that "due to the fact that [the Portugal family] failed to turn up for their appointments, it was not possible to perform an initial diagnosis to determine their ailments". However, the State "reassert[ed] its willingness to resume this treatment by performing a medical test and planning open appointments to treat the Portugal family", which was presented to the Court and which includes quotas in different moments of 2010. Moreover, regarding what the Commission and the representatives alleged as to the fact Mrs. Graciela De León permanently lives outside the city of Panama, "and therefore cannot be treated in Santo Tomas Hospital", the State indicated that "Ministry of Foreign Affairs has requested by means of note [...] of May 24, 2010, to the Ministry of Health and the authorities of Santo Tomas Hospital [...] the coordination with the Regional Health Center in Penonomé in order to provide Mrs. [...] De León [...] with medical and psychological care at [her] place of [...] residence." In addition, the State "consider[ed] it was appropriate to mention [...] that measures have been adopted to provide special treatment to Mrs. Portugal and to inform the medical personnel of Santo Tomas Hospital of the case of [said] family [...] and that it was mandatory to provide them with free medical and psychological care." Regarding Room 25 of Psychiatry of Santo Tomas Hospital, the State indicated that "it is not a psychiatry room where there are people with mental disorders who are behaving improperly."

25. The representatives pointed out that even though "on some occasions [they had] gone [to] Santo Tomas [Public] Hospital for emergencies, [...] they [had] been treated as [...] if they were not victims of human rights violations." In that respect, Mrs. Patria Portugal indicated that "the two times [she went to the Hospital], one time to take [her] mother and another time for an emergency [she had], [they were] treated very badly." According to the representatives, "the State has given instructions through official letters [for the hospital] to treat them [...], but [that] has not been translated into a diagnosis or psychological care at all." In addition, "so far the State has referred to the care for Mrs. Graciela [De León], who does not live in the capital city [...] and therefore, the appointments they had [...] arranged, do not comply with any of the aspects the Court established in its Judgment." Hence, according to the representatives, "the State would [have assumed] the compliance with this measure as a set of different activities to be carried out at the beneficiaries' request, without performing an initial diagnosis and planning their care."

26. Regarding the psychological – psychiatric treatment, Mrs. Patria Portugal pointed out that the State wanted for her and her family to go to "room 25 of Santo Tomas Hospital where people with mental disorders are," and that even though she considered that "they were suffering from some psychological disease due to all the things they went through, [...] they [are not] crazy" so as to be attended in said psychiatric area. The representatives made reference to a note of the Minister of Health of March 9, 2009, in which it was mentioned that the State "does not count on an Outpatient Service system and a trained personnel specialized in victims of grave human rights violations so as to offer them treatment in the way the Court recommends" and that, after consulting with the Pan American Health Organization, the State would have received as a response that "the people, who went through violent situations in different ways, [could] be treated within the framework of the health system in mental health services and according to the regional mental health program of the [PAHO]." Hence, the representatives insisted on that the obligation established by the Court includes, *inter alia*, the "hiring of personnel specialized in the subject or [...] adequate training for the existing personnel".

27. Moreover, the Commission specified that "up to the present date, the beneficiaries [...] have still not been provided with specialized psychological treatment," "no diagnosis has been conducted regarding their medical needs, and no decision has been made as to the place where Graciela De León is going to be provided with medical care." Moreover, "it regretted to listen to what Mrs. Patria Portugal informed on several occasions [...] about the treatment provided."

28. The Court takes notes of the different initiatives related to health care taken by the State and repeats that "without detriment to the measures the State shall adopt within the framework of the general health system, it is necessary [for the State] to provide the victims with preferential treatment".¹⁰ In this regard, the Tribunal has held that the social services that the State provides to individuals cannot be confused with the reparations to which the victims of human rights violations have a right, based on the specific damage arising from the violation¹¹. Therefore, in the first place, the Court may only assess compliance with this measure of reparation based on the information related to the activities that were carried out after the Judgment. In the second place, the Tribunal considers that the victims must be provided with preferential treatment in relation to the formalities and procedures they have to follow in order to be treated in public hospitals.

29. In addition, the Tribunal repeats what was pointed out in paragraph 256 of its Judgment, to the effect that "[t]he medical treatment for their physical health must be provided by personnel and institutions specializing in the ailments suffered by these persons to ensure that the most adequate and effective care is provided." Moreover, "[t]he psychological and psychiatric treatment must be provided by personnel and institutions specialized in treating victims of acts such as those that occurred in this case" and "must take into account the ailments of each of the victims following individual evaluation." In this regard, the Tribunal takes note of what was informed by the State regarding the request presented by the Minister of Foreign Affairs to the Minister of Health and to the authorities of Santo Tomas Hospital, in order to coordinate the treatment of Mrs. Graciela De León at the Regional Health center in Penonomé.

30. Furthermore and in view of the arguments presented by the representatives and Mrs. Patria Portugal within the framework of the private hearing (*supra* Having Seen clause 6), this Tribunal also recalls that in its Judgment, it emphasized that the medical as well as the psychological care must be provided according to the requirements and consent of the beneficiaries. The psychological treatment provided must take into account the particular circumstances and needs of each of the next of kin, so that they can be provided with collective, family or individual treatment, as agreed with each of them and following individual assessment¹². To that effect, it is important for state authorities to continue counting on the cooperation and consent of the beneficiaries.

31. Based on the foregoing, the Tribunal considers that it needs organized, detailed, complete and updated information regarding the measures adopted by the State related to the compliance with this aspect and implemented after the Judgment delivered in favor of Graciela De León, Patria Portugal and Franklin Portugal. Moreover, the Court requires further details in relation to the information presented by the State itself as to the feasibility of what the Pan American Health Organization indicated, in the sense that "the people, who went through violent situations in different ways, [could be] treated within the framework of health system [...] mental health services [of Panama]."

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¹⁰ Case of 19 Tradesmen V. Colombia. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, considering clause thirty-four; Case of the Pueblo Bello Massacre V. Colombia. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of July 9, 2009, considering clause thirty; Case of the Mapiripán Massacre V. Colombia. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009; Considering clause fifty- four.

¹¹ See Case of González et al ("Cotton Field") V. Mexico. Preliminary Objections, Merits, Reparations and Legal Costs. Judgment of the Inter-American Court of Human Rights of November 16, 2009. Series C N° 205, para. 529

¹² Case of the 19 Tradesmen V. Colombia. Merits, Reparations and Legal Costs. Judgment of July 5, 2004. Series C N°. 109, para. 278; Case of *Golburú et al V. Paraguay*. Monitoring Compliance with Judgment. Order of November 19, 2009, considering clause forty-one; and Case of the 19 Tradesmen V. Colombia. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering Clause eleven.

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32. As to the duty to define the offenses of forced disappearance of persons and torture (*operative paragraph sixteen of the Judgment*), the State referred to the proposal of a "Bill that modifies and adds sections to the Criminal code, to adjust it to the international definition of the crime of forced disappearance and the crime of torture," which "was presented in the year 2008." However, within the framework of the private hearing, the State made reference to a new bill "[which] shall be presented by the First Vice- President and Chancellor of the Republic before the National Assembly at the House of Representatives on September 1, 2010, when the new legislative period begins and which shall be based on the legislative initiative launched by the Ministry of Foreign Affairs." The State explained that "it is necessary to wait until [such] a date [since] according the Panamanian constitutional law, any bill presented within a presidential period, the legislative process of which is not over by the end of such a period, has to be presented again in the next presidential period". According to the documentation presented by the State at the private hearing, such bill would embody what the Court indicated in its Judgment, as well as the specialized observations on "international standards" in the matter. In this way, as to the crime of forced disappearance, the new bill would be different in the following aspects: a) "[t]he element of illegitimacy in the deprivation of liberty;" b) "[t]he dilemma about the elements of deprivation of liberty and the denial to provide information regarding the whereabouts of the disappeared person;" c) "[t]he denial to acknowledge the deprivation of liberty;" d) "[t]he proportionality of the punishment based on the seriousness of the crime," and e) "[t]he continuous or permanent nature of the crime." Regarding the crime of torture, the new bill is different as to: i) "[t]he lack of definition of [the] elements constituting such a crime;" ii) "[t]he limitation of the wrongdoing to public officials," and iii) "[t]he deprivation of liberty of the victim."

33. In relation to the first bill, the representatives pointed out that "it is clear that the proposed drafting does not solve all the problems indicated by the [...] Court in its Judgment." Moreover, they emphasized that "a proposal from the Executive branch is not enough; instead, such a proposal must be draft according to the international obligations assumed by the State and must be duly approved by the procedures established in the Panamanian law."

34. As to the first bill, the Commission "t[ook] note [...] and considered [it] was a first step towards compliance [with was ordered in] the Judgment." Within the framework of the private hearing, it consulted whether the new bill that is going to be presented on September 1, 2010 "is the same." This, because for the Commission, in the first bill, "[the] forced disappearance only [makes] reference to illegal detentions, for which punishment is five to eight years, and [therefore], it is concerned about the proportionality of the punishment with the crime." Regarding the crime of torture, said first bill, "basically does not satisfy any of the elements referred to by the Court in its Judgment, [since] it does not clearly establish which are the elements constituting the crime [...], and it only refers to its application to detained people."

35. In that respect, the Court underlines that those States that have ratified the Convention, in exercise of their sovereign authorities, have acquired the commitment to adapt their legislation and with that, ensure the application of the rules recognized by the state itself, by the state's agents or organs. The opposite thing would be translated in a concerning suspension of the conventional rules that would be inconsistent with the effective enforcement of the human rights and the sovereign decision of the State to bind itself to comply with the rules of the Convention. In this respect, the Court observes that failure to define or the incorrect definition, at the domestic level, of the forced disappearance and torture hinders the effective development of effective criminal proceedings, current and future, allowing impunity to prevail¹³.

¹³ See *Case of Heliodoro Portugal V. Panamá*. Merits, Reparations and Legal Costs. *Judgment of August 12, 2008*. Series C No. 186, para. 183; *Case of Trujillo Oroza V. Bolivia*. Monitoring Compliance with the

36. Hence, the Tribunal recalls the terms established in paragraph 259 of the Judgment in the sense that the State must define both offenses "in the terms and in compliance with the obligations assumed under the Convention on Forced Disappearance and the Convention against Torture, as of March 28, 1996, and August 28, 1991, respectively." In this way, the Court notes that the instant obligation will be considered fulfilled once the bill becomes an act of the Republic and comes into force, which should be realized within a reasonable time. That, in such way, in order to ensure the useful effect of the provisions of the American Convention and its own effects, according to the obligations contained in Articles 1(1) and 2 of the Convention, the Court urges the State to adopt the measures necessary to adapt its domestic rules¹⁴.

37. Based on the foregoing, the Court considers that, in relation to the compliance with this aspect, it requires organized, detailed, thorough, and updated information from the State in order to be able to learn about the processing of the new bill and, if applicable, the subsequent approval by the National Assembly. Furthermore, taking into account the presentation of said new bill within the framework of the private hearing, the Tribunal requests the respective observations of the Commission and the representatives as to the content of such bill and its compliance with what was ordered in the Judgment, according to the terms established in Operative Paragraph three of this Order.

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 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. That, in accordance with the terms of Considering clauses 9, 13 and 17 of this Order, the State has fully complied with the following operative paragraphs of the Judgment:

- a) pay Graciela De León, Patria Portugal and Franklin Portugal, the amount established in paragraph 233 of this judgment, as compensation for pecuniary damage (*operative paragraph ten of the Judgment*);
- b) pay Graciela De León, Patria Portugal and Franklin Portugal, the amount established in paragraph 239 of this judgment, as compensation for non-pecuniary damage (*operative paragraph eleven of the Judgment*);
- c) Publish, once, in the official gazette and in another newspaper with widespread circulation, Chapters I, III, VI, VII, VIII, IX and X of [...] Judgment, without the corresponding footnotes, and its operative paragraphs (*operative paragraph thirteen of the Judgment*);

Judgment. Order of November 16, 2009, considering clause thirty-nine; Case of Carpio Nicolle V. Guatemala. Monitoring Compliance with the Judgment. Order of July 1, 2009; Considering Clause fourteen.

¹⁴ See *Caballero Delgado and Santana V. Colombia. Monitoring Compliance with the Judgment*. Order of the Inter-American Court of Human Rights of November 27, 2003; Considering Clause nine and ten; *Case of Fermín Ramírez V. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 9, 2008; Considering Clause forty-six; *Case of Raxcacó Reyes v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 9, 2008, Considering Clause forty-six.

- d) Make the payment for reimbursement of costs and expenses (*operative paragraph seventeen of the Judgment*) and,
 - e) carry out a public act acknowledging its international responsibility in relation to the violations declared in th[e] Judgment (*operative paragraph fourteen of the Judgment*);
2. That it will keep open the procedure to monitor compliance with the following aspects pending compliance in the instant case, namely:
- a) Investigate the facts that gave rise to the violations in the instant case, and identify, prosecute and, if applicable, punish those responsible (*operative paragraph twelve of the Judgment*);
 - b) provide the medical and psychological care required by Graciela De León de Rodriguez, Patria Portugal and Franklin Portugal, immediately and free of charge, through its specialized health care institutions (*Operative Paragraph fifteen of the Judgment*) and
 - c) Define the offenses of forced disappearance of persons and torture within (*operative paragraph sixteen of the Judgment*).

AND DECIDES:

1. To request the State of Panama to adopt all measures necessary to effectively and promptly fulfill those aspects which are still pending compliance, mentioned in operative paragraph two *supra*, in accordance with the terms established in Article 68(1) of the American Convention on Human Rights.
2. To request the State of Panama to submit to the Inter- American Court of Human Rights, no later than September 8, 2010, a report specifying the measures it has adopted to comply with the reparations ordered by this Court that are still pending compliance, as spelled out in the Considering clauses 21 to 23, 29 to 31, and 35 to 37, as well as in the operative paragraph one and two of this Order.
3. To call upon the representatives and the Inter-American Commission on Human Rights 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 receipt date thereof.
4. To require the Secretariat of the Court to notify this Order to the State of Panama, the Inter-American Commission and the representatives.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. 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