

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF DECEMBER 1, 2011**

**CASE OF RADILLA PACHECO v. UNITED MEXICAN STATES  
MONITORING COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

1. The judgment on preliminary objections, merits, reparations and costs (hereinafter "the judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 23, 2009.

2. The order on monitoring compliance with judgment issued by the Court on May 19, 2011, in which it declared, *inter alia*, that the following obligation remained pending:

[...]

f) To hold a public act of acknowledgement of responsibility with regard to the facts of the present case and in order to restore the memory of Rosendo Radilla Pacheco, and to place a plaque recalling the facts of his forced disappearance in Atoyac de Álvarez (Guerrero) (*fourteenth operative paragraph of the judgment* [...]);

[...]

3. The communications of July 14 and August 29, 2011, in which the United Mexican States (hereinafter "the State" or "Mexico") presented information on compliance with the judgment delivered by the Court in this case (*supra* having seen paragraph 1). Also, the communications of November 16, 18 and 29, 2011, in which the State presented information on the public act of acknowledgement of responsibility and the unveiling of a plaque recalling the forced disappearance of Rosendo Radilla Pacheco (*supra* having seen paragraphs 1 and 2).

4. The brief of October 17, 2011, in which the representatives of the victims (hereinafter "the representatives") presented their observations on the State's communications of July 14 and August 29, 2011 (*supra* having seen paragraph 3). Also, the briefs of November 10, 18 and 29, 2011, in which the representatives referred to the public act of acknowledgement of responsibility and the unveiling of a memorial plaque in this case (*supra* having seen paragraph 3).

5. The communication of November 8, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations on the State's report of August 29, 2011 (*supra* having seen paragraph 3). In addition, the communication of November 29, 2011, in which the Commission presented its observations on the information forwarded by the State and the representatives on the public act of acknowledgement of responsibility and the unveiling of a memorial plaque (*supra* having seen paragraphs 3 and 4).

## CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. Mexico has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since March 24, 1981, and accepted the compulsory jurisdiction of the Court on December 16, 1998. Furthermore, it ratified the Inter-American Convention on Forced Disappearance of Persons on April 9, 2002.
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 domestic level of the Court's decisions in its judgments.<sup>1</sup>
4. The Court has recently received from the parties a vast amount of information on the organization by the State of a public act of acknowledgement of responsibility during which a plaque was unveiled recalling the forced disappearance of Rosendo Radilla Pacheco. Based on the information submitted and the claims made, principally by the State and the representatives, in this order the Court will rule on this aspect.

***Obligation to hold a public act of acknowledgement of responsibility with regard to the facts of the case and in order to restore the memory of Rosendo Radilla Pacheco, and to place a plaque recalling the facts of his forced disappearance in Atoyac de Álvarez, Guerrero (fourteenth operative paragraph of the judgment)***

### **A. Arguments of the State**

5. The State advised that, in compliance with the judgment, on November 17, 2011, it had organized a public act of acknowledgement of responsibility in Atoyac de Álvarez, Guerrero, in the presence of the acting Minister of the Interior, and the Minister for Foreign Affairs, together with the following officials of the state of Guerrero: the Governor, the heads of the Legislature and the Judiciary, and the President of the Guerrero Human Rights Commission. In addition, during this act, a plaque was unveiled recalling the forced disappearance of Mr. Radilla Pacheco. The State forwarded various documents, videos and audios on the coordination and the logistics for the organization of this act, as well as on its implementation. Regarding this point, in the report it presented on August 29, 2011, the State indicated that, "as an act of good faith and full commitment to the promotion and respect for human rights, the Federal Executive, through the [then] Deputy Minister of Legal Affairs and Human Rights of the Interior Ministry [...] delivered a message of acknowledgement of responsibility with regard to what happened in the case of Rosendo Radilla Pacheco[; which] was televised during the hour of national transmissions on Sunday, August 14, [2011]." The State forwarded a copy of the video that was disseminated.

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<sup>1</sup> Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of August 30, 2011, third considering paragraph, and *Case of the Yean and Bosico Girls v. Dominican Republic*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of October 10, 2011, third and fourth considering paragraphs.

6. Regarding the information presented by the representatives concerning the failure to comply with some aspects of this measure of reparation (*infra* eighth and ninth considering paragraphs), the State indicated that, in its opinion, the said public act “complied with all the requirements of the judgment.” In this regard, the State mentioned that “not only had [it] held extensive discussions [with the victims and their representatives], but it had responded to all their requirements, including the program of the event, the place where it would be held, the level of representation of the State, the text of the plaque acknowledging responsibility, the speech of the Minister of the Interior, and even the paragraphs of the judgment which were read as part of the State’s acknowledgement of responsibility.”<sup>2</sup> In addition, it asserted that “the State has complied amply, and even excessively, with all the agreements reached with the petitioners during the five meetings held previously, even at a very complex institutional moment as a result of the tragic accident [...] resulting in the death of the [then] Interior Minister [...] and the Vice Minister for Legal Affairs and Human Rights of the Ministry [...] who was directly responsible for the organization of the act of acknowledgement of responsibility.” The State mentioned that “the Court must be aware that the Government of Mexico is making indisputable efforts to respond to all the requests of the victims and their representatives, even on aspects that are not necessarily specified in the judgment.”

7. Furthermore, the State indicated that “the absence of the victims and their representatives [at the public act of acknowledgement of responsibility] was based on their exclusive decision and responsibility.” In this regard, it mentioned that, in a meeting with the representatives on November 9, 2011, in response to the latter’s request that the then Interior Minister should attend the act, the State undertook to take the necessary steps to ensure his presence. However, in the State’s opinion, the assistance of other State officials, which the representatives were already aware of, complied with the ruling of the judgment concerning the “presence of senior national authorities.” The State indicated that, the following day, the decision was taken that the Interior Minister would attend the public act of acknowledgement of responsibility that, initially, was to be held on November 14, 2011. Nevertheless, on November 11, the representatives issued a press communiqué and informed the Court that the said official had “cancelled his participation” in the said public act. In this regard, the State indicated that, subsequently, the representatives claimed that there had been “confusion regarding the State’s position.” However, the State clarified that there was no confusion, because, during the meeting held on November 9, the State had undertaken to take the necessary steps with regard to the assistance of the Interior Minister. Hence on November 11, 2011, it confirmed to the representatives that this official would attend the public act of acknowledgement of responsibility but, to the State’s surprise, the representatives indicated that they would not attend the event. Following the accident in which the then Interior Minister died, on November 15, 2011, the President of the Republic issued a series of instructions to “the competent State officials,” among others, “to make every effort to ensure that the act of acknowledgement of responsibility is held as soon as possible,” and “to ask for the comprehension of the victims and their representatives in this regard.”<sup>3</sup> Consequently, “for easily understandable scheduling

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<sup>2</sup> The State indicated that, *inter alia*, it agreed to the representatives’ request that the public act of acknowledgement of responsibility would be held in Atoyac de Álvarez, Guerrero, even though the judgment did not specify this; that the program of the said act was agreed with the representatives, and also the text of the memorial plaque that was unveiled, as well as the paragraphs of the judgment that were read during the act; also, the speech given by the acting Interior Minister “was submitted to the consideration of the victims and their representatives.”

<sup>3</sup> In addition, the President of the Republic instructed these officials “to re-organize their agendas giving priority to the immediate satisfaction of the requests of the petitioners; to hold the event with the presence of even two State Ministers; to provide all the assistance that the victims and their representatives require for the event, and to request the support of senior authorities of the state de Guerrero to this end.”

reasons, it was decided that the date on which [the federal and state officials who had been designated to attend the even] could agree was November 17, 2011." The State indicated that it "considered that it would have the comprehension and the presence of the victims and their representatives" at the said act, because "they had been offered all the material and any other type of assistance to take part in it, given the very high level of representation of the State and that all the requests of the victims and their representatives, without exception, had been satisfied."

## **B. Arguments of the representatives**

8. The representatives indicated that "the State held the public act of acknowledgement ordered by the Court [complying] partially with the elements ordered in the judgment [...]," such as implementing it "in a public ceremony," "in the presence of senior national authorities," and "to make reparation to Rosendo Radilla Pacheco, in the agreed place, [with] speeches by the officials referring to the human rights violations declared in the judgment [...]." Nevertheless, they also indicated that Mexico had "not complied with [...] basic elements" required by the Court in this regard, because "it decided the date of the act unilaterally"; namely, November 17, 2011, and because it was not held in the presence of the next of kin of Mr. Radilla Pacheco. The representatives referred to several measures taken by the State previously, in order to hold the public act of acknowledgement of responsibility originally on November 14, 2011. In this regard, they stated that, owing to a discrepancy regarding the Interior Minister's assistance at the said act, which, according to the representatives had been agreed to by the State, they "assumed that it had been suspended on the day initially programmed," and this was confirmed by the State following the death, on November 11, 2011, of the officials who would have presided this event. The representatives indicated that "discussions were resumed by the parties, and the Government proposed, initially, to hold the act on November 25 or 18." However, since "Tita Radilla had commitments abroad during the week of November 25, that she had made several months before and that, in addition, she would receive the Ponciano Arriaga Leija Award from the Human Rights Commission of the Federal District on November 18 in [Mexico City], the Government was asked to consider other dates." In a letter of November 14, 2011, addressed to the State by the representatives, they also mentioned that "following consultations with the Radilla family, they and their representatives, did not agree that the event [be] held on [November 18, 2011, ...] owing to the emotional stress caused by the process [of preparation and cancellation of the public act of acknowledgement of responsibility]."

9. In addition, the representatives asserted that, even though the State had undertaken to hold a meeting on November 18, 2011, to fix a new date for the public act by mutual agreement, the representatives were notified at 2 p.m. on November 16, 2011, that the said act would be held the following morning; and this is what happened, despite the objections of the representatives. In this regard, they indicated that the assistance of the next of kin of Rosendo Radilla Pacheco at the public act of acknowledgement of responsibility would be "materially" impossible, because: (i) the members of the family had scattered and faced "physical difficulty to regroup in less than 24 hours"; (ii) Tita Radilla had scheduled a doctor's appointment in Acapulco, [...] which she could not cancel given her actual state of health," and (iii) there was a "real difficulty to ensure a timely invitation to attend the act to all the organizations of victims, national and international human rights, and civil society in general that had been invited by the Radilla family and their representatives for the original date [...]."

**C. Arguments of the Commission**

10. The Inter-American Commission assessed positively the information provided by the State “with regard to the implementation of the act on November 17, 2011.” Nevertheless, it observed with concern the failure of the representatives to take part in this public act of acknowledgement of responsibility and, therefore, found that this “prevents considering that this aspect of the judgment has been complied with.” Consequently, it asked the Court to request information from the parties on the measures that could be adopted in the near future to comply fully with this obligation.

**D. Considerations of the Court**

11. The information in the case file indicates that the representatives and the State concur that they held several meetings in order to reach agreement on the details of the public act of acknowledgement of responsibility and the unveiling of the plaque recalling the forced disappearance of Rosendo Radilla Pacheco, both ordered in the judgment. Originally, this public act was going to be held on November 14, 2011. To this end, the details of the event had been approved by the representatives; however, they insisted that the Minister of the Interior attend the said act. In this regard, in its judgment, the Court ordered that the public act of acknowledgement of responsibility should be held, *inter alia*, in the presence of senior national authorities and the next of kin of Mr. Radilla Pacheco.” Therefore, even though the judgment did not specifically require the presence of the Mexican Minister of the Interior, the Court takes note that, nevertheless, the State made a major effort, to ensure that the said official could attend this public act. However, owing to his death, the act was postponed. Finally, the public act to acknowledge responsibility and to unveil the plaque took place on November 17, 2011, in Atoyac de Álvarez, Guerrero.

12. The judgment also ordered that the “State and the next of kin of Mr. Radilla Pacheco and/or their representatives reach agreement on how [the public act of acknowledgement of responsibility] is held, as well as on its details, such as the place and date.” In this regard, the information provided by the parties reveals that agreements already existed between the representatives and the State regarding the program of the public act of acknowledgement of responsibility, the place where it would be held, the text of the plaque to be unveiled, the speech that the Minister of the Interior would give, and the paragraphs of the judgment that would be read during the act. In this regard, the Court does not find that the information presented by the representatives includes satisfactory reasons to consider that Mr. Radilla Pacheco’s next of kin were faced with insurmountable obstacles to attend the act held on November 17, 2011. Even though the representatives only received one day’s notice of when it would be held, the level of the State officials whose presence was confirmed, which included two State Ministers, at least one of them at the request of the representatives themselves, and the fact that the essential aspects of the act had been agreed previously with the representatives, merited the next of kin of Rosendo Radilla Pacheco making an effort to attend the public act of acknowledgement of responsibility. In addition, it is on record that the State offered them any assistance they required to be able to attend.

13. Based on the information submitted by the parties, together with the documentary support provided, the Court finds that the State has complied with the fourteenth operative paragraph of the judgment delivered in this case (*supra* having seen paragraph 1).

**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) and 68(1) of the American Convention on Human Rights, 25(1) of its Statute, and 31(2) and 69 of its Rules of Procedure,

**DECLARES THAT:**

1. As indicated in the eleventh to thirteenth considering paragraphs of this order, the State has complied with the fourteenth operative paragraph of the judgment on preliminary objections, merits, reparations and costs delivered in this case.

**AND DECIDES:**

1. To keep open the proceedings on monitoring compliance with regard to the other obligations of the judgment that remain pending in this case, in accordance with the order of May 19, 2011.

2. To require the Secretariat of the Court to notify this Order to the United Mexican States, 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