

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF NOVEMBER 26, 2013**

CASE OF CASTILLO PÁEZ v. PERÚ

MONITORING OF COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objections rendered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on January 30, 1996; the Judgment on the merits rendered by the Court on November 3, 1997 (hereinafter "the Judgment on the merits"), and the Judgment on reparations and costs rendered by the Court on November 27, 1998 (hereinafter "the Judgment on reparations"). The case refers to the detention and subsequent forced disappearance of Mr. Ernesto Rafael Castillo Páez attributable to the Republic of Peru (hereinafter "the State" or "Peru") because they were carried out by members of the National Police; the inefficiency of the habeas corpus remedy; and the failure to determine the fate of the victim and, if applicable, the whereabouts of his remains. The State was declared responsible for the violation of Articles 4, 5, 7 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to Article 1(1) thereof, to the detriment of Mr. Ernesto Rafael Castillo Páez, and Article 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of his next-of-kin.

2. The Orders on monitoring of compliance rendered by the Court on June 1, 2001, November 27, 2002, November 27, 2003, November 17, 2004, April 3, 2009, and May 19, 2011. In the latter, the Court declared that:

1. In accordance with the provisions of considering paragraphs 7 through 11 of [the] Order, the State is not complying with its obligation to inform the Court about the measures taken to comply with its rulings in the judgments on merits and on reparations delivered on November 3, 1997, and November 27, 1998, respectively.

2. It will keep the procedure of monitoring compliance open with regard to the obligation to adopt available measures to determine the whereabouts of Ernesto Rafael Castillo Páez, which is still pending.

And Decid[ed]:

[...]

2. To request the Republic of Peru to present to the Inter-American Court of Human Rights, by July 15, 2011, at the latest, a brief indicating all the measures adopted to comply with the pending obligation, in accordance with the seventh to eleventh considering paragraphs of [the] Order.

3. To require the State, following presentation of the brief required in the preceding paragraph, to continue reporting to the Court every three months on the measures taken to comply with the pending obligation.

* The President of the Court, Judge Diego García Sayán, of Peruvian nationality, did not participate in the hearing and deliberation of this Order, pursuant to that provided in Articles 19(2) of the Statute and 19(1) of the Court Rules of Procedure.

[...]

3. The brief of August 4, 2011, wherein, after an extension that was granted, Peru indicated that it requested information from the Public Prosecutor's Office and the Judiciary on the whereabouts of Mr. Ernesto Rafael Castillo Páez, and that once the requested information was received, it would inform the Court on the matter.

4. The note of the Secretariat of the Court (hereinafter "the Secretariat") of August 17, 2011, wherein, pursuant to instructions by the President-in-Office of this case and in accordance with that which was expressed by the State (*supra* Having Seen clause 3), Peru was granted until September 16, 2011, to present information on the measures adopted to "determine the whereabouts of Ernesto Rafael Castillo Páez."

5. The brief of September 5, 2011, wherein the representatives of the victims (hereinafter "the representatives") provided their observations to that which was expressed by the State. (*supra* Having Seen clause 3).

6. The notes of the Secretariat of February 15 and May 24, 2012, wherein, once the State's period lapsed, Peru was requested to provide a State brief as quickly as possible, and the note of the Secretariat of April 8, 2013, wherein the same request regarding submission of a State brief was reiterated, to be provided by no later than June 10, 2013. Lastly, the note of the Secretariat of August 20, 2013, wherein, among other things, the request was made to the State once again to submit a State brief by no later than October 21, 2013. The State did not present the requested information.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Peru became a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 28, 1978 and acknowledged the jurisdiction of the Court on January 21, 1981.

3. As established in Article 67 of the American Convention, the State must comply fully and promptly with the judgments of the Court. Also, 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.¹ The obligation to fulfill that provided by the Court includes the State's duty to inform the Court of the measures adopted to comply with the rulings of the Court. The prompt implementation of the State's obligation to report to the Court on how each aspect ordered by the Court is being fulfilled is essential in order to assess the status of compliance with the Judgment as a whole.²

¹ Cf. *Case of Baena Ricardo et al. V. Panamá. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Castañeda Gutman V. México. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 28, 2013, Considering clause three.

² Cf. *Case of Five Pensioners V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause four, and *Case of the Saramaka People V.*

4. 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, States must comply with their 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 treaty³. The treaty obligations of the States Parties are binding for all the powers and organs of the State.⁴

5. 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 must be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁵

a) *Obligation to adopt the measures available to determine the whereabouts of Ernesto Rafael Castillo Páez*

6. The State noted that it requested information from the Public Prosecutor's Office and the Judiciary on the whereabouts of Mr. Ernesto Rafael Castillo Páez, and that once said information was received, it would inform the Court on the matter.

7. The representatives stated that they did not understand the purpose behind the request made to the Public Prosecutor's Office and the Judiciary regarding information about the whereabouts of Mr. Ernesto Rafael Castillo Páez, given that before both instances there would be no proceeding nor investigation in regard to the matter, because the investigations carried out by these instances were closed, and had nothing more to report to date than the conclusions it made in the judicial proceeding. They also noted that any action carried out in attempts to ascertain and identify the place where the victim's remains would be found, should be "decided" with those who had been tried and convicted of the facts of the case. This being so since these persons can provide information about what they did with the victim and where their remains can be located, and this has not been done, since the State continues by carrying out formalities "that lead to nothing concrete," "extensively delaying compliance with this part of the judgment." Therefore, they asked the

Surinam. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 4, 2013, Considering clause twenty-four.

³ 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. Series A No. 14, para. 35, and *Case of Castañeda Gutman V. México. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of August 28, 2013, Considering clause four.

⁴ Cf. *Case of Castillo Petruzzi et al. V. Perú. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 17, 1999, Considering clause three, and *Case of Castañeda Gutman V. México. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of August 28, 2013, Considering clause four.

⁵ Cf. *Case of Ivcher Bronstein V. Perú. Competencia.* Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37, and *Case of Castañeda Gutman V. México. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of August 28, 2013, Considering clause five.

Court to require the State to explain in detail what actions are being developed to meet this obligation.

8. The Commission did not present observations given that, after various periods were granted, the State failed to provide information on the measures adopted to comply with this measure of the Judgments on the merits and reparations.

9. Given the general obligation to respect and guarantee the rights of the next-of-kin of Ernesto Rafael Castillo Páez, and as expressed by the Court in the judgments on the merits and reparations ordered in this case, as well as in the Orders of the Court of April 3, 2009, and May 19, 2011,⁶ the State's obligation to take measures within its power to determine the whereabouts of Ernesto Rafael Castillo Páez remains. In this regard, although Peru stated that it requested information from the Public Prosecutors and the Judiciary about his whereabouts, the Court considers it appropriate to remind the State that the criminal investigation is not incompatible with the adoption of different appropriate and effective means of locating the whereabouts of missing persons.⁷

10. The Court recalls that during the proceeding before the Inter-American system, the next-of-kin of the disappeared victim declared that, according to the non-official sources, the young Castillo Páez "had been assassinated at a beach in the south of Lima and that his body had been bombed with explosives."⁸ Specifically, during the public hearing on the merits of the case held at the Court on February 6 and 7, 1997, it was noted that "Commander Juan Carlos Mejía León was the officer responsible for the death of Mr. Castillo Páez", and it was he who reported "that his remains had been taken to a beach in the south of Lima and blown up with explosives."⁹ Subsequently, during the monitoring of compliance of the Judgments on the merits and reparations, it was reported that on March 16, 2006, the National Criminal Chamber of Peru convicted Juan Carlos Mejia Leon, Manuel Santiago Arotuma Valdivia, Carlos Manuel Depaz Briones and Juan Fernando Aragón Guibovich, sentencing them to deprivation of liberty "for the crime against humanity –Forced Disappearance- against Ernesto Castillo Páez" and to pay the amount established for civil reparation.¹⁰ Notwithstanding, more than seven years after the ruling of the National Criminal Chamber and after seventeen years since this Court heard the testimony that linked Juan Carlos Mejía León in the possible elimination of the Mr. Castillo Páez's remains,

⁶ Cf. *Case of Castillo Páez V. Perú. Merits*. Judgment of November 3, 1997. Series C No. 34, para. 90; *Case of Castillo Páez V. Perú. Reparations and Costs*. Judgment of November 27, 1998. Series C No. 43, para. 103; *Case of Castillo Páez V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering clause nineteen, and *Case of Castillo Páez V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 19, 2011, Considering clause eight.

⁷ Cf. *Case of Gómez Palomino V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 5, 2011, Considering clause fifteen, and *Case of Blanco Romero et al. V. Venezuela. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 22, 2011, Considering clause thirteen.

⁸ The Court does not have information procedures carried out in this regard, notwithstanding, in Orders of the Court of April 3, 2009 and May 19, 2011, it was noted that the State had not informed the Court whether this version of events had been disproved or confirmed by authorities. Cf. *Case of Castillo Páez V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 19, 2011, Considering clause nine, and *Case of Castillo Páez V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering clause twenty.

⁹ Testimony of Augusto Zúñiga Paz. See also Testimony of Cronwell Pierre Castillo Castillo, father of the victim, rendered before the Court. Cf. *Case of Castillo Páez V. Perú. Fondo*. Judgment of the Inter-American Court of Human Rights of November 3, 1997. Series C No. 34, para. 30.a) and e).

¹⁰ Cf. *Case of Castillo Páez V. Perú. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering clause eight.

there has been no progress in the implementation of this measure of reparation. As such, the Court stresses the importance of compliance with this measure, because it implies that there will be a moral satisfaction for the victims and closes the mourning process they have been living for years.¹¹

11. As a consequence, the State must adopt the necessary measures in an immediate manner to determine the whereabouts of Ernesto Rafael Castillo Páez, the only measure in the Judgments on the merits and reparations that is pending compliance. In order for the Court to determine compliance with this measure of reparation, the State must present detailed, complete and updated information, together with the supporting documentation, on: a) the judicial and administrative actions, as well as other actions, carried out in attempts at finding the whereabouts of Ernesto Rafael Castillo Páez that are in addition to those that have already been reported during the proceeding on monitoring compliance with the Judgments ordered in this case; b) the investigations and procedures carried out given the information received on the alleged elimination of the remains of Mr. Ernesto Rafael Castillo Páez, provided in the processing of the merits before this Court, and c) the actions and procedures carried out regarding those that were processed and convicted for the facts of the case in order to determine the whereabouts of Ernesto Rafael Castillo Páez.

b) *Obligation of the State to report on measures adopted to comply with the Judgments on the merits and reparations*

12. Pursuant to the operative paragraph two of the Order of the Court of April 3, 2009 (*supra* Having Seen clause 2), the State was supposed to present, by no later than July 15, 2009, a brief that indicated “all the judicial and administrative, as well as other actions, taken by the authorities in attempts at determining the whereabouts of Ernesto Castillo Páez”. By way of a brief of June 29, 2009, the State referred to the “[o]bligation to investigate, prosecute, and judge those responsible for the violations committed in [this] [c]ase.” Notwithstanding, given that this brief “did not contain information required by the Court,” three more requests for this brief were made to Peru. This brief was never provided.¹² As a consequence, by way of the Order of the Court of May 19, 2011, a request was made for the State to present a brief, by no later than July 15, 2011. The last communication made by the State to this Court was on August 4, 2011, nevertheless, it did not provide information on the measures adopted to determine the whereabouts of Ernesto Rafael Castillo Páez. Subsequently, on five occasions, the Court reiterated requests for the presentation of information from the State and it granted various periods for this (*supra* Having Seen clause 4 and 6). Nevertheless, Peru has not presented the required information on the judicial and administrative actions, or other type of actions, taken by authorities in attempts at determining the whereabouts of Ernesto Castillo Páez. In light of the aforementioned, the Court considers it relevant to refer to the State’s failure to comply with the obligation to inform the Court on compliance with the Judgment.

13. The Court considers it necessary to highlight and recall, just as it has done on previous occasions,¹³ that the timely fulfillment of the State’s obligation to report to the

¹¹ Cf. *Case of The Dos Erres Massacre V. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Chitay Nech et al. V. Guatemala. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of August 22, 2013, Considering clause nineteen.

¹² Cf. *Case of Castillo Páez V. Perú. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of May 19, 2011, Having seen clauses four and five, and Considering clause eleven.

¹³ Cf. *Case of Castillo Páez V. Perú. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause seven and eight, and *Case of Castillo Páez V.*

Court how it is complying with each of the points ordered by it is essential in assessing the status of compliance with the judgment as a whole, and that this is not fulfilled merely by the formal presentation of a document before the Court, but rather it is twofold in nature and effective compliance requires the formal presentation of a document within the allotted time and with specific, true, current and detailed information on the issues to which this obligation refers.¹⁴

14. Without proper information from the State, this Court can not effectively exercise its powers of monitoring compliance with the implementation of its Judgments. It is relevant to recall that providing sufficient information on the adopted measures is an obligation of the State established by this Court,¹⁵ and the General Assembly of the OAS has reiterated that, in order for the Court to fully comply with the obligation to report on compliance with its judgments, it is necessary for States parties to provide the required information.¹⁶

15. Peru must take all the necessary steps to fully comply with the provisions of the Court in the judgments on the merits and reparations (*supra* Having Seen clause one). This obligation includes the State's obligation to inform the Court on the measures adopted to fully comply with that which was ordered in the Judgments.

16. Based on the foregoing, the Court considers it essential that this State present a complete, detailed and updated brief on measures taken to "determine the whereabouts of Ernesto Rafael Castillo Páez," the only measure of the Judgment that is still pending compliance (*supra* Considering clause 11). Similarly, it is necessary that the Court receive the observations of the representatives of the victims and the Inter-American Commission in this regard.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its judgments under Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, 24 and 30 of its Statute and 31(2) and 69 of its Rules of Procedure,

Perú. Monitoring of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 19, 2011, Considering clauses nine and ten.

¹⁴ Cf. *Case of Bámaca Velásquez V. Guatemala. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause seven, and *Case of Yatama V. Nicaragua. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of August 22, 2013, Considering clause sixteen.

¹⁵ Cf. *Case of Five Pensioners V. Perú. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause five, and *Case of Gómez Palomino V. Perú. Monitoring of Compliance with Judgment.* Order of the Inter-American Court of Human Rights of February 13, 2013, Considering clause twenty-one.

¹⁶ Cf. General Assembly of the OAS, "Observations and Recommendations to the Annual Report of the Inter-American Court of Human Rights," Resolution AG/RES. 2759 (XLI-O/12), approved in the fourth plenary session, held on June 5, 2012, Operative Paragraph five.

DECIDES THAT:

1. Pursuant to that noted in Considering clauses 6 to 16 of this Order, the State has not fulfilled its obligation to inform the Court on the measures adopted to comply with the Judgments on the merits and reparations issued on November 3, 1997, and November 27, 1998, respectively.
2. Keep open the proceeding on monitoring of compliance in regard to the obligation to adopt the available measures to determine the whereabouts of Ernesto Rafael Castillo Páez, which is still pending compliance.
3. The Republic of Peru adopt all necessary measures to effectively and promptly fulfill the measures that are pending compliance, mentioned in operative paragraph two of this Order, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
4. The Court will continue monitoring compliance with the Judgments on the merits of November 3, 1997 and on reparations of November 27, 1998.
5. The Republic of Peru must provide the Inter-American Court of Human Rights, by no later than March 26, 2014, a brief that indicates all the measures that have been taken to comply with the pending matter, in accordance with Considering Clauses 6 to 11, and operative paragraph two of this Order.
6. The representatives of the victims and the Inter-American Commission on Human Rights provide any observations they deem relevant to the State's brief mentioned in the previous paragraph, in the period of four and six weeks, respectively, counted from receipt thereof.
7. The Secretariat of the Inter-American Court of Human Rights shall notify this Order to the Republic of Peru, the Inter-American Commission on Human Rights, and the representatives of the victims.

Manuel E. Ventura Robles
Acting President

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel E. Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary