

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF FEBRUARY 5, 2013
CASE OF BAENA RICARDO *ET AL.* v. PANAMA
MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on merits, reparations and costs delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on February 2, 2001 (hereinafter "the Judgment"), concerning the dismissal of 270 employees of different State companies based on the application of Law 25 of December 14, 1990, in violation of the principle of legality and non-retroactivity, of guarantees of due process, and of freedom of association.

2. The Orders on monitoring compliance with the Judgment issued by the Inter-American Court on June 21 and November 22, 2002, June 6, 2003, November 28, 2005, October 30, 2008, July 1, 2009, May 28, 2010, February 22, 2011, and June 28, 2012. In the latter, the Court declared as follows:

1. In accordance with the provisions of considering paragraphs 12 to 16 of this Order, the State has complied with the final disbursement stipulated in the agreements in relation to 264 victims or heirs of the 269 persons who signed the agreements, and has forwarded the corresponding receipts.

2. In accordance with the provisions of considering paragraph 21 of this Order, the State has complied by forwarding the vouchers of the guarantee certificates issued for the fourth and final payment corresponding to the victim who has still not signed the agreement, to the victim who, despite having signed it, has not withdrawn any of the four payments, and to the victim who signed the agreement on January 27, 2012.

3. In accordance with considering paragraphs 16 and 24, the procedure for monitoring compliance with the Judgment shall remain open until the Court receives: (a) the receipts for the third payment made to the heirs of two victims; (b) the receipts for the fourth payment to the beneficiary who is resident in Brazil, to the beneficiary for whom the required proof of payment has not been forwarded, as well as the payment to the heirs of the victim who died after the third payment was made.

AND DECIDE[D]:

[...]

* Judge Alberto Pérez Pérez advised the Court that, for reasons beyond his control, he would be unable to be present for the deliberation and signature of this Order.

3. That the Court will keep open the procedure to monitor compliance with the Judgment, pursuant to the provisions of considering paragraphs 16 and 24 of this Order.

3. The briefs of August 10 and October 31, 2012, in which the Republic of Panama (hereinafter "the State" or "Panama") forwarded information on compliance with the Judgment.

4. The brief of August 30, 2012, and the attachments, in which the Center for Justice and International Law (hereinafter also "CEJIL") submitted its observations on the information provided by the State.

5. The communications of August 31, September 16, 17, 18 and 22, and December 26, 2012, and January 4 and 15, and February 1, 2013, in which the *Organización de Trabajadores Víctimas de la Ley 25* (hereinafter also "the *Organización de Trabajadores Víctimas*") presented its observations on the information provided by the State, and also the documentation presented by this organization on October 29, 2012, with regard to some internal mechanisms and requests made regarding compliance with the Judgment.

6. The brief of September 25, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") forwarded its observations on the State's reports and on the observations submitted by the two representatives.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is 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 accepted the obligatory jurisdiction of the Court on May 9, 1990.

3. Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." To this end, the State must ensure implementation at the national level of the Court's decisions in its judgments.¹

4. In view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, the State must comply with them fully and promptly.

5. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of international law, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.³

¹ Cf. *Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 131, and *Case of Salvador Chiriboga v. Ecuador. Monitoring compliance with judgment*. Order of the Court of October 24, 2012, second considering paragraph.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9,

6. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

7. The States Parties to the Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. This duty includes the State's obligation to inform the Court on the measures adopted to comply with the decisions taken by the Court in the said judgments. Prompt observance of the State's obligation to inform the Court of how it is complying with each aspect ordered by the latter is essential in order to assess the status of compliance with the Judgment as a whole.⁵

8. Pursuant to the third operative paragraph of the Order of the Court of June 28, 2012 (*supra* having seen paragraph 2), in this Order, the Court will evaluate the following aspects that remain pending: (a) compliance with the third payment to the heirs of two victims, Mario Pino and Ricardo Rivera; (b) compliance with the fourth payment to three victims (César De Obaldia, Luis Osorio and David Jaen Marin), and will also refer to: (c) other aspects related to compliance with the Judgment that the parties have mentioned to the Court.

a) Third payment to the heirs of two victims

9. In its Order of February 22, 2011, the Court indicated that the third payment to the heirs of two deceased victims was pending, because the official ruling on their status as heirs was awaited; consequently, the State was asked to provide the corresponding information.⁶ However, owing to the absence of information from the State and the representatives, in its Order of June 28, 2012, the Inter-American Court again requested the State to forward the pertinent explanations or, if appropriate, the vouchers confirming the third payment to the heirs of the said victims.⁷

10. In August 2012, the State advised that Mario Pino, one of the victims regarding whom the Court had requested the voucher confirming the third payment to his heirs, "is

1994. Series A No. 14, para. 35, and *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Court of September 7, 2012, fourth considering paragraph.

³ *Cf. Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of November 17, 1999, third considering paragraph, and *Case of Barrios Altos v. Peru*. Order of the Court of September 7, 2012, fourth considering paragraph.

⁴ *Cf. Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of September 24, 1999, Series C No. 54, para. 37, and *Case of Vargas Areco v. Paraguay. Monitoring compliance with judgment*. Order of the Court of September 4, 2012, fifth considering paragraph.

⁵ *Cf. Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Court of September 22, 2005, seventh considering paragraph, and *Case of Salvador Chiriboga v. Ecuador*. Order of the Court of October 24, 2012, third considering paragraph.

⁶ *Cf. Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the Court of February 22, 2011, fourteenth and fifteenth considering paragraphs.

⁷ *Cf. Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the Court of June 28, 2012, twenty-fourth considering paragraph.

not deceased.”⁸ It explained that “the vouchers for the third payment made to Mr. [...] Pino gave rise to some confusion because Mr. Pino had granted a power of attorney to Clementina Cajar de Trujillo so that she could receive the payments.” In this regard, Panama provided the vouchers for the third and fourth payments in favor of the said person, which were made in September 2010 and 2011, respectively. Furthermore, with regard to the deceased victim Ricardo Rivera, the State indicated that his “official heir” had received two checks and provided copies of the latter.

11. The Center for Justice and International Law, representative of both victims, indicated that “those who [it] represented have informed [it] that they have no objection to the payment vouchers.”

12. The Inter-American Commission took note of the information provided by the parties and their observations without making any specific comments in this regard.

13. The *Organización de Trabajadores Víctimas* did not mention this aspect.

14. Regarding the information provided by the State, the Court notes that Panama provided the vouchers confirming the third payment made in favor of Clementina Cajar de Trujillo who, according to the State, holds a power of attorney for the victim Mario Pino. This was not disputed by Mr. Pino’s representatives who, to the contrary, stated that the individuals they represented had no objections concerning the payments mentioned by the State in its brief of August 2012 (*supra* considering paragraphs 10 and 11). Consequently, the Court considers that it has been proved that the State has complied with the third payment to the victim Mario Pino.

15. In addition, regarding the payments made to the heir of Ricardo Rivera, the Court observes that the vouchers provided by the State correspond to the second and fourth payment. The Court recalls that, in its Order of June 2012, it asked the State to forward the vouchers corresponding to the third payment to the heirs of this victim, which was the only voucher that was pending, since all the others had already been provided. The Inter-American Court has still not received the vouchers for the third payment in favor of the said victim. Therefore, the Court asks that the State, within the time frame established in the operative paragraphs of this Order, forward the voucher for the third payment in favor of the heirs of Ricardo Rivera or, if appropriate, the corresponding explanations.

b) Fourth payment to three victims who signed the agreements or their heirs

16. Regarding the fourth and last payment of the amounts established in the agreements, the Court recalls that, as established in its Order of June 2012, it was awaiting the vouchers for the fourth payment in favor of a victim who resides in Brazil, César De Obaldia; of a victim regarding whom it had not received confirmation of the said payment, Luis Osorio; as well as of payment to the heir or heirs of the victim who died after the third payment, David Jaen Marin.

17. In this regard, the State advised that César De Obaldia, the victim who resides in Brazil, had “withdrawn his check [corresponding to the fourth payment] on May 5, 2012,” and provided a copy of the check and of the voucher of the payment to Mr. De Obaldia. In addition, Panama provided a copy of the check and receipts for the fourth payment in favor

⁸ In its Order of June 2012, the Court indicated that the said victim was deceased based on a communication from the Ministry of Labor and Employment, attached to the State’s brief of November 29, 2010, indicating that “Clementina Cajar de Trujillo [is the] official heir of the decedent Mario Pino Batista”.

of Luis Osorio and indicated that it “was waiting for the ruling on the heir[s of the deceased victim, David Jaen Marin], in order to deliver [his fourth payment].”

18. The Center for Justice and International Law, representative of these three victims, indicated that “the victims [it] represents have informed [it] that they have no objection concerning the payment vouchers” and the supporting documents provided by the State in relation to the fourth payment in favor of the said three victims.

19. The *Organización de Trabajadores Víctimas* did not submit any specific observations regarding the information provided by the State, but merely indicated its disagreement and dissatisfaction with, among other aspects, the agreements and their endorsement by the Court. In addition, it indicated that certain domestic authorities had failed to respond to their requests for information and claims in the domestic sphere.

20. The Inter-American Commission took note of the information provided by the parties and their observations without making any specific comments in this regard.

21. First, as required in its Order of June 2012, this Court notes that the State has delivered the fourth payment to the victim who resides in Brazil, César De Obaldia, and has also provided the voucher for the fourth payment made to Luis Osorio. Consequently, the Court considers that the State has complied with the payment of the last disbursement established in the agreements and with forwarding the corresponding vouchers in relation to these two victims.

22. Second, the Court takes note that the ruling on the heirs of David Jaen Marin remains pending, and therefore the State has not yet delivered the fourth payments in his favor to his heirs. The representatives and the Commission made no specific mention of this victim. Accordingly, the Court awaits the reception of the check signed by the respective heir or heirs or the voucher for the bank deposit or deposit certificate in their favor.

c) Other aspects related to compliance with the Judgment

23. The Court observes that, in its two briefs, the State stressed that the victims Luis Batista and Andrés Bermúdez have refused to receive the corresponding payments, despite the efforts made by the State to deliver them, and that the said payments have therefore been deposited as guarantee certificates in the *Banco Nacional de Panamá*. Copies of the deposits were provided. The representatives did not submit any specific observations in this regard, and the Commission indicated that it was waiting for the vouchers of the guarantee certificates mentioned by the State, which were again provided by the State with its brief of October 31, 2012.

24. In this regard, the Court recalls that, in its Order of June 2012, the Court noted that the said guarantee certificates had been deposited in the *Banco Nacional de Panamá*, and therefore considered that the State had complied with its obligation to deposit the amounts corresponding to the fourth payments for these victims in a bank account.⁹ Consequently, the Court notes that the said obligation is no longer the object of this procedure of monitoring compliance with judgment.

25. Furthermore the Court notes that CEJIL attached as an annex to its brief with observations, without including any legal considerations or analysis, a brief signed by some of the persons it represents in which they indicated their “disagreement with the payment

⁹ Cf. *Case of Baena Ricardo et al. v. Panama*. Order of the Court of June 28, 2012, twenty-first considering paragraph.

agreements that are being executed and made observations on the Order [of the] Court of June 28, 2012.” In this brief, a group of victims requested, among other matters, that an expert assessment “authorized by the Court in plenary” be ordered of the payments made to the victims and the other amounts and concepts allegedly due to them. The Court notes that the persons who signed the said brief are victims who signed the agreements endorsed by the Court on compliance with the Judgment. The *Organización de Trabajadores Víctimas*, almost all of those it represents also having signed the agreements, has also submitted numerous communications and briefs to the Court indicating its discontent, inconformity and dissatisfaction with the way in which the Judgment is being complied with, the amounts paid and, in general, has objected to the measures taken by Panama and the Court’s decisions in this regard. In addition, in its communications, the said representatives also requested an expert appraisal of the payments made and those allegedly due, as well as the establishment of a tripartite committee to assess compliance with the Judgment.

26. Regarding these concerns, the Court recalls what it has indicated in its previous Orders,¹⁰ and reiterates that the scope and content of the agreements with regard to the items paid appears in the instrument signed by the said persons and the criteria used by the State were presented in its report, which was forwarded to the legal representatives and the summary of which appears in the Order of October 30, 2008. In addition, the Court recalls that it will only keep the procedure of monitoring compliance with the Judgment open in order to receive: (a) the vouchers for the payment to the victims or heirs who signed the agreements, and (b) the vouchers of the bank deposits with regard to those persons who have not signed the agreements or who, having signed them, retracted.¹¹

27. In addition, the Court finds it pertinent to recall that, in these international proceedings, the international monitoring procedure has terminated for those to whom the State has paid the amounts owed, without prejudice to the continuation of the claims that some of the victims of this case have filed under domestic law.¹²

28. With regard to the latter, the Court takes note of a domestic judgment handed down by the Third Contentious-Administrative and Labor Chamber of the Supreme Court of Justice and provided by the *Organización de Trabajadores Víctimas*, in which the Chamber decided not to admit a complaint filed by some of the victims in relation to compliance with the Judgment delivered by this Court. As indicated in the decision provided to this Court, the Supreme Court did not admit the said complaint because it considered that, “in this case, it is not viable to seek [the calculation of the award by an abstract appeal against the judgment of the Inter-American Court] through a contentious-administrative proceeding on compensation, because this should be achieved by a ‘request’ in the course of the proceedings in which the judgment that gave rise to the complaint was delivered and, in this specific case, there is no evidence that such proceedings were heard on Panamanian territory.”

29. The Court notes that it has no information on the specific purpose of the said legal action or on its possible implications or consequences for the eventual claims that the

¹⁰ Cf. *Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the Court of July 1, 2009, sixteenth considering paragraph; *Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the Court of May 28, 2010, seventeenth considering paragraph, and *Case of Baena Ricardo et al. v. Panama*. Order of the Court of February 22, 2011, twentieth considering paragraph.

¹¹ Cf. *Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the Court of October 30, 2008, fourth operative paragraph, and *Case of Baena Ricardo et al. v. Panama*. Order of the Court of February 22, 2011, third operative paragraph.

¹² Cf. *Case of Baena Ricardo et al. v. Panama*. Order of the Court of June 28, 2012, twenty-seventh considering paragraph.

victims in this case could submit to the domestic authorities. Moreover, it notes that the State has not had the opportunity to refer to the said judicial decision or to present its corresponding observation. Consequently, the Court asks the State that, in the report requested in the fourth operative paragraph of this Order, it refer to the said decision of the Supreme Court of Justice and, specifically, to advise whether the decision represents an obstacle for the victims of the instant case to file claims under domestic law in relation to this case. The Court recalls that, since 2008, it has repeatedly ordered that “any disagreements concerning the determination of all the rights arising from the Judgment, and the compensation and reimbursement amounts relating to compliance with the provisions of the sixth and seventh operative paragraphs of the Judgment be decided in the domestic sphere, pursuant to the pertinent internal procedures, which include the possibility of having recourse to the competent authorities, including the domestic courts.”¹³

30. The Court appreciates the effort made by the State to make progress in complying with the Judgment, which is revealed by the payment or deposit of the amounts established in the agreements to almost all the victims of the instant case or their heirs. Pursuant to its authority under the Convention and its Rules of Procedure, the Court will continue the procedure of monitoring compliance with the Judgment in the terms established in the Order of October 30, 2008, and will conclude this case when the State has made all the corresponding payments and deposits, as established in the agreements and in the said Order.

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) and 68(1) of the American Convention on Human Rights, 30 of its Statute and 31 and 69 of its Rules of Procedure,

DECLARES THAT:

1. In accordance with considering paragraphs 14 and 21 of this Order, the State has complied with the third and fourth payment decided in the agreements in relation to Mario Pino, César De Obaldía and Luis Osorio, respectively, and forwarded the corresponding vouchers.

2. In accordance with considering paragraphs 15, 22 and 29 it will keep the procedure of monitoring compliance with the Judgment open in order to receive: (a) the voucher for the third payment to the heirs of the victim Ricardo Rivera; (b) the voucher for the fourth payment to the heir or heirs of the victim David Jaen Marin, and (c) the explanations or observations of Panama on the implications of the judgment handed down by the Supreme Court of Justice in relation to this case.

AND DECIDES:

¹³ *Case of Baena Ricardo et al. v. Panama*. Order of the Court of October 30, 2008, second operative paragraph; Order of the Court of July 1, 2009, third operative paragraph; Order of the Court of May 28, 2010, third operative paragraph; Order of the Court of February 22, 2011, second operative paragraph, and Order of the Court of June 28, 2012, second operative paragraph.

1. To require the State of Panama to continue adopting the necessary measures to comply promptly and effectively with the pending payments included in the agreements with regard to the victims or heirs indicated in the second declarative paragraph.
2. To reiterate, in relation to the victims or heirs who did not sign the agreement or who, following the signature of the agreement, retracted, that the discrepancies concerning the determination of all the rights arising from the Judgment, and the compensation and reimbursement amounts relating to compliance with the sixth and seventh operative paragraph of the Judgment, must be decided in the domestic sphere, following the pertinent domestic procedures, which include the possibility of having recourse to the competent authorities, including the national courts.
3. To indicate that the Court will keep the procedure of monitoring compliance with the Judgment open, as noted in considering paragraphs 15, 22 and 29, as well as in the second declarative paragraph of this Order.
4. To request the State of Panama to submit to the Inter-American Court of Human Rights, by May 6, 2013, at the latest, a report indicating the measures adopted to comply with this Order and to forward the documentation on the payments made to the victims or heirs indicated in the second declarative paragraph, as well as the information requested in considering paragraph 29 of this Order.
5. To request the representatives of the victims and the Inter-American Commission on Human Rights to present any observations they consider pertinent on the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.
6. To require the Secretariat to notify this Order to the State of Panama, the representatives of the victims and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Manuel E. Ventura Robles

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary