

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JUNE 26, 2012**

CASE OF 19 TRADESMEN *v.* COLOMBIA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on Merits, Reparations and Costs delivered on July 5, 2004 (hereinafter "the Judgment") of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court").

2. The Orders of the Inter-American Court of February 2, 2006, July 10, 2007, November 26, 2008 and July 8, 2009. In the latter order, the Court decided:

[...]

2. That it w[ould] keep open the procedure to monitor compliance with the following aspects pending full compliance, namely:

a) Within a reasonable time, the State shall investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed against the 19 tradesmen, for the criminal and any other effects that may arise from the investigation into the facts, and the result of this measure shall be disseminated publicly (*Operative Paragraph 5 and paragraphs 256 to 263 of the Judgment*);

b) Within a reasonable time, the State shall conduct a genuine search during which it makes every possible effort to determine with certainty what happened to the remains of the victims and, if possible, return them to their next of kin (*Operative Paragraph 6 and paragraphs 270 and 271 of the Judgment*);

c) The State shall erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, [...] shall place a plaque with the names of the 19 tradesmen (*Operative Paragraph 7 and paragraph 273 of the Judgment*);

* Judge Diego García-Sayán, who did not participate in the deliberation and signing of the Judgment in the instant case, did not participate in the deliberation and signing of this Order.

d) The State shall provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims (*Operative Paragraph 9 and paragraphs 277 and 278 of the Judgment*);

e) The State shall create all the necessary conditions for the members of the family of the victim Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and cover the costs they incur as a result of their return (*Operative Paragraph 10 and paragraph 279 of the Judgment*); and

f) The State shall pay the amounts established in the judgment for loss of earnings for each of the 19 victims, the expenses incurred by the next of kin of eleven victims, and non-pecuniary damages (*Operative Paragraphs 12, 13, 14 and 15 and paragraphs 230, 231, 233, 234, 235, 240, 241, 242, 243, 248, 249, 250, 251 and 252 of the Judgment*).

3. The briefs of November 20, 2009, February 12, April 9, April 16, April 28 and April 30, 2010 and of January 13, July 13 and September 12, 2011, in which the State of Colombia (hereinafter "the State" or "Colombia") reported on the progress made in complying with the Judgment and referred to the report submitted by the victims' representatives (hereinafter "the representatives") and the relatives of certain victims regarding the measure of reparation related to the monument in memory of the victims (*infra* having seen paragraphs 4 and 5).

4. The briefs of April 5, April 14, April 15, June 16, November 25, December 21, 2010, of June 3, June 24, July 27, and November 30, 2011, in which the representatives submitted their observations to the State's report, together with additional information on compliance with the measures of reparation ordered in the Judgment.

5. The briefs of June 28, August 2 and November 2, 2011, in which certain family members of the majority of the victims reported some facts related to the monument in memory of the victims, and also referred to the State's comments in that regard.

6. The briefs of April 5 and April 28, 2010, of April 4, August 3, November 21 and November 29, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations to the briefs of the State and of the representatives.

7. The notes of the Secretariat of the Court of August 1 and 5 and November 3, 2011, in which the parties were informed that the information concerning the reparation measure related to the monument in memory of the victims would be brought to the attention of the President of the Court and of the Court for the relevant purposes.

8. The Orders of the President of the Court of April 29, 2010 and February 8, 2012, in which the President summoned the parties involved to private hearings regarding nine Colombian cases, in relation to monitoring compliance with the measures of reparation on medical and psychological care ordered therein. These hearings were held on May 19, 2010 and on February 23, 2012, at the seat of the Court in San Jose, Costa Rica.

CONSIDERING THAT:

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

2. In accordance with the provisions of Article 67 of the American Convention, the State must comply fully and promptly with the Court's judgments. Likewise, 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, States must ensure that the rulings set forth in the Court’s decisions are implemented at the domestic level.¹ The aforementioned obligation to inform the Court of the measures adopted in compliance with its rulings includes the duty of the State to report on the measures adopted in this regard. Timely observance of its obligation to report to the Court on how it is complying with each of the measures ordered is essential for evaluating the status of compliance with the Judgment as a whole².

A. Obligation to effectively investigate the facts of this case, within a reasonable period, in order to identify, prosecute and punish all the perpetrators and masterminds of the violations committed.

A. 1) Regarding the State’s obligation to report on the investigation of the facts

3. Before proceeding to evaluate compliance with the obligation to investigate, the Court must first rule on specific arguments offered by the State regarding the scope of the Court’s jurisdiction to monitor compliance with this measure of reparation.

4. In its last report on compliance with the Judgment, the State noted that “the appropriate forum for debating matters related to the current criminal investigation into the facts under consideration, [...is] in the context of the criminal procedure itself, by way of the procedural remedies offered.” It emphasized, *inter alia*, that: (i) the Court does not have the authority to examine and decide on aspects related to procedural matters, except when a violation of due process is alleged, and (ii) the right to due process of the accused should be ensured, so that matters that affect them are not discussed without their participation. Prior to said report, in November 2009, the State had indicated that the criminal proceeding was subject to confidentiality, without elaborating further on the matter.

5. In this regard, the representatives pointed out that the State’s arguments do not allow the Court to assess whether or not the State has fulfilled its obligation to investigate, in accordance with the relevant international standards. They explained that in providing information on the investigation, they do not expect the Court “to replace the Colombian criminal justice system,” but rather to assess compliance with this obligation. The representatives stated that the confidentiality of the criminal proceeding has led to a failure to provide the Court with information, “constituting [...] an obstacle,” to the assessment of the measures ordered. Moreover, they noted that withholding this information affects the principle of equality of arms and due process, “as well as undermining –if not annulling- the effectiveness” of monitoring compliance with the Judgment. They stated that they are aware of the consequences of making public specific procedural information, and therefore consider that the information “should be conveyed to the Court and to the parties in the proceeding, but in some other way to third parties.”

¹ Cf. *Case of Baena Ricardo et al. Jurisdiction*. Judgment of the Inter-American Court of November 28, 2003. Series C No. 104, para. 60 and 131, and *Case of Kawas Fernández v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 27, 2012, considering paragraph 2.

² Cf. *Case of Five Pensioners v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of November 17, 2004; *Case of Kawas Fernández V. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of February 27, 2012, considering paragraph 3.

6. The Commission stated that “it is difficult to understand” the nature of the State’s arguments. It stated that it is “indispensable” that the State provide information on the progress of the investigations. It recalled the importance of providing the Court with detailed information and giving the parties the opportunity to present observations in this regard.

7. As to the arguments offered by the State, the Court reiterates the comments made in its Order of July 8, 2009, that during the stage of monitoring compliance with its decisions, the Court’s role is not to determine the facts of the case and its consequences, or to analyze all aspects of the investigations and domestic proceedings, but rather to verify the level of compliance with the provisions of the Judgment.³ The Court emphasizes that without the relevant information from the State, this Court cannot effectively monitor compliance with the measures of reparation and the implementation of its decisions. It is pertinent to recall that the State has an obligation to provide sufficient and necessary information on the measures adopted in compliance with the Court’s judgments.⁴ Similarly, the Court recalls that the General Assembly of the Organization of American States has reiterated “the need for States Parties to provide, in a timely fashion, the information required by the Court in order to enable it to fully meet its obligation to report to the General Assembly on compliance with its judgments.”⁵

8. Furthermore, this Court reiterates that it understands the risks associated with the publication of certain information on the domestic investigations, for which reason it will take into consideration all the information provided, but will include only what is essential in this Order, so as to determine the level of compliance with this operative paragraph. In fulfilling its role of monitoring compliance with the measures of reparation, and having regard to the adversarial principle, in each case the Court will assess the need, appropriateness and importance of maintaining the confidentiality of the information provided in terms of its use in the Order, but not in terms of access to it by the parties involved. Likewise, the Court reiterates that when the records of an investigation are confidential, the State is required to send the copies requested confirming that fact and explaining the need, appropriateness or importance of maintaining the confidentiality of that information. This will be carefully evaluated by the Court, in order to include it in the body of evidence of the case, respecting the principle of adversarial proceedings, as appropriate.⁶

A.2) Regarding the investigation of the facts

³ Cf. *Case of the 19 Tradesmen v. Colombia. Monitoring Compliance with Judgment and Provisional Measures*. Order of the Inter-American Court of Human Rights of July 8, 2009, considering paragraphs 12, 13 and 15.

⁴ Cf. *Case of the “Five Pensioners” v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, considering paragraph 5, and *Case of Blanco Romero v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 22, 2011, considering paragraph 38.

⁵ Cf. *inter alia*, General Assembly, Order AG/RES. 2587 (XL-O/10) approved at the Fourth Plenary Session, held on June 8, 2010, entitled “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights”, Operative paragraph 4, and General Assembly, Order AG/RES. 2652 (XL-O/11) approved at the Fourth Plenary Session, held on June 7, 2011, entitled “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights”, Operative paragraph 5.

⁶ Cf. *Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of the Inter-American Court of January 28, 2009. Series C No. 194, para. 100; *Case of Almonacid Arellano et al. v. Chile. Monitoring Compliance with Judgment*. Order of the Inter-American Court of November 18, 2012, para. 12.

9. The State reported that the Attorney General's Office "has carried out extensive activities" in the investigation of the facts of this case, which was in the preliminary stage. In November 2009, Colombia reported that "among the main activities carried out," it heard and ordered preliminary statements or further statements to be taken from three individuals on March 19 and 26 and May 26, 2009. Subsequently, in January 2011, the State indicated that the Attorney General's Office sought to "determine the responsibility" of three military officers, for which purpose it received five statements, and issued a decision closing the criminal proceedings against one of the military officers investigated, due to his death. The State also reported on several actions carried out as part of the investigation, such as corroborating information with different judicial bodies; making inquiries to locate potential witnesses with a view to taking their statements; efforts to identify persons potentially linked to the case; and issuing orders to obtain specific statements. Finally, the State reiterated that "the relevant authorities would continue with their best efforts to investigate, prosecute and, where applicable, punish those responsible for the events in this case." Likewise, it "promise[d] to report to the Inter-American Court in a timely manner on [any] new developments made in this regard."

10. The representatives noted that the State has provided no further information regarding compliance with this measure of reparation, since they were the ones who sent copies of the file on the domestic proceeding to this Court. They recalled that "time is running out for the right to truth and justice in this case," citing the example of the death of one of the alleged perpetrators "who may have known the whereabouts of the disappeared persons." Moreover, the representatives emphasized the delay by the Attorney General's Office in carrying out several procedures recommended by the Human Rights Investigations Group of the National Office of the Technical Investigation Unit, which conducted several inquiries that helped to locate three witnesses in October 2010. The representatives also stressed that the latest facts provided by the State in its report of September 2011 do not reflect the current status of the investigation, but "merely [constitute] orders given by the Attorney General's Office," without any results being reported which, in their opinion, demonstrates "stagnation in the current process." They also noted that the Attorney General's Office has not reactivated the arrest warrants nor has it "resolved the legal situation" of two military officers, in respect of whom the Attorney General's Office expanded the inquiry and charged them with forced disappearance in September 2008. Finally, the representatives insisted that: a) there is no record of any significant progress made in the criminal proceedings; b) after more than twenty-four years since the events took place and with considerable evidence gathered over the last twenty years that incriminates two former military officers in the crime, these individuals have not been prosecuted, and c) the Attorney General's Office has not carried out investigations regarding other perpetrators, including paramilitary commanders subject to the justice and peace process, against whom "there is substantial material evidence" of their participation in the events of this case.

11. The Commission stated that although it noted the State's willingness to investigate, prosecute and, if applicable, punish those responsible, it considered that the information provided by the State "does not reveal substantial progress" in the investigation. It noted that no "systematized information" exists regarding the investigations to be able to determine whether, subsequent to the delivery of the Judgment, the legal measures taken are sufficient to guarantee effective access to justice and ensure that all claims of impunity in this case "are definitively eradicated." Finally, the Commission noted "with concern" that the information presented by the State in its last report is incomplete, as it does not indicate the date on which the proceedings took place, does not provide copies of these proceedings and does not report on their results and the follow-up mechanisms.

12. Regarding the obligation to investigate, the Court recalls that in ordering this measure of reparation in the Judgment it took into account that the State had violated the right to judicial guarantees and judicial protection in this case given that (i) military courts carried out the investigation and prosecution of law enforcement personnel in relation to the violations to the detriment of the 19 tradesmen, contravening the standards established in the American Convention, and (ii) the criminal proceedings in which the civilians involved in the case were tried did not respect the principle of reasonable time and were not effective as regards the search for the remains of the 19 tradesmen.⁷

13. Likewise, the Court recalls that when it delivered the Judgment with the regard to what happened to the first 17 victims⁸ in this case, the ordinary jurisdiction had convicted two civilians as authors of the crime of aggravated homicide; two civilians as accomplices to the crime of aggravated homicide; and another civilian for the crime of extortive kidnapping (kidnapping for ransom).⁹ The latter civilian was also convicted in the ordinary jurisdiction for the crime of extortive kidnapping for what happened to the other victims.¹⁰ On this point, in its Judgment, the Court established that the impunity for those responsible for the actions in this case was partial, given that the criminal proceedings were conducted in the ordinary courts, although these had not observed the principle of reasonable time. Nevertheless, the Court recalls that in its Judgment it also concluded that “for more than sixteen years, there was a situation of impunity in relation to the investigation and punishment by competent courts of the law enforcement personnel.”¹¹

14. Since the Court issued the Order of July 8, 2009, the State has reported that: (i) five statements were collected, four of these from members or relatives of members of paramilitary groups that carried out the detention and execution of the 19 tradesmen, and one from a retired General, without their results having been reported to the Court; (ii) an order was issued to close the criminal proceedings due to the death of a former military

⁷ *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs.* Judgment of July 5, 2004. Series C No. 109, para. 256.

⁸ In instant case, 17 tradesmen were detained on October 6, 1987 by members of the “paramilitary” group or criminal group that operated in the Municipality of Puerto Boyacá, in the region of Magdalena Medio, who subsequently “murdered them [...], dismembered their bodies and tossed them into the “El Ermitaño” brook, a tributary of the Magdalena River.” Approximately fifteen days after the disappearance of the 17 tradesmen, Juan Alberto Montero Fuentes and José Ferney Fernández Díaz, relatives of some of the tradesmen, were detained by the aforementioned “paramilitary” group when they were found searching for the disappeared and suffered “the same fate as the first seventeen (17) disappeared persons.” *Case of 19 Tradesmen V. Colombia. Merits, Reparations, and Costs.* Judgment of July 5, 2004. Series C No. 109, paras. 85(e) 85(f), 85(h).

⁹ A third civilian had also been convicted as a perpetrator of the crime of aggravated homicide of these 17 tradesmen; however, this accused died in the course of an appeal, and therefore the Criminal Appeals Chamber of the Supreme Court of Justice declared the criminal proceeding closed due to the death of the defendant. *Cf. Case of 19 Tradesmen V. Colombia. Merits, Reparations, and Costs.* Judgment of July 5, 2004. Series C No. 109, paras. 88(f), 88(h), 88(i), 88(j), 88(k), 88(m), 88(o), 202(i), 202(ii) and 202(iii).

¹⁰ Upon delivering the judgment of second instance that accused the civilian of the crime of kidnapping for extortion, the National Tribunal acquitted three defendants for the crimes of homicide and kidnapping for ransom of these two victims, because “despite considering proven that the death of Juan Montero and Ferney Fernández was carried out by outlaw groups, the entire body of evidence provided does not make it possible to specifically determine or individualize who acted as perpetrators, masterminds and accomplices.” Likewise, the Criminal Court of the Special Circuit of San Gil acquitted three other individuals of the crimes of homicide and kidnapping for ransom to the detriment of Juan Alberto Montero Fuentes and José Ferney Fernández Díaz because “there was not enough evidence [...] to specify who the perpetrators could be” of the homicide of Juan Montero and Ferney Fernández; however, it noted that “the same [paramilitary] group could be held responsible.” *Cf. Case of 19 Tradesmen V. Colombia. Merits, Reparations, and Costs.* Judgment of July 5, 2004. Series C No. 109, paras. 88(h), 88(k), 88(m), 88(o) and 202(iv).

¹¹ *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs,* para. 257.

officer (retired General); (iii) an order was issued to obtain six statements, one of which was apparently received, while the Court has not been informed of the receipt of the others; (iv) an order was issued to conduct inquiries to locate witnesses or persons possibly involved in the facts of instant case, regarding which the Court received no information after the instructions were issued in July 2011 or regarding the results obtained after these inquiries, and (v) an order was issued to notify the head of the National Unit for Justice and Peace to report on whether demobilized persons had provided information on the facts of this case, without the Court being informed on whether this information had in fact been requested and the results. In this regard, the Court reiterated that the State's obligation to comply with the Court's decisions includes the obligation to provide it with sufficient information in order to assess effective compliance with the measures of reparation ordered in the Judgment (*supra* considering paragraph 7).

15. This Court takes cognizance of the proceedings carried out by the State and appreciates the fact that after the Judgment was issued, the State took the important step of transferring the investigation to the ordinary jurisdiction,¹² bearing in mind one of the violations of due process and judicial protection declared in the Judgment (*supra* considering paragraph 12). Nevertheless, it notes that, according to the information provided by the State itself, twenty-four years and nine months after the events, and nearly eight years after notification of the Judgment, the process remains at the investigative stage and no significant progress has been reported to the Court. In particular, the Court points out that no member of the security forces has been prosecuted for the violations committed against the 19 victims, even though the Court considered proven that in this case "the 'paramilitaries' had the support of senior military leaders in the activities preceding the detention of the victims and when they committed the crimes against the latter."¹³ The Court recalls that in its Judgment it ordered Colombia to investigate effectively the facts of this case, in order to identify, prosecute and punish all the perpetrators and masterminds responsible for the violations committed to the detriment of 19 tradesmen, for the criminal and any other effects that may result from the investigation of the facts". In particular, the Court emphasized that the "competent ordinary criminal courts must investigate and punish the members of the security forces who took part in the actions."¹⁴

16. Likewise, according to the information provided by the parties during the monitoring compliance stage, the Court confirms that no other criminal proceeding or trial has been initiated against other alleged perpetrators of the acts, other than the five civilians who had already been convicted at the time the Judgment was issued (*supra* considering paragraph 13). Therefore, the Court considers that the State must continue to investigate the matter with the utmost due diligence in order to identify all those responsible, both perpetrators and masterminds, for the violations committed against the 19 victims. As noted previously, the Court considers it important to stress that a trial that is carried to conclusion and fulfills its purpose is the clearest sign of the lack of tolerance of human rights violations, since it

¹² On March 6, 2008, the Appeals Chamber of the Supreme Court of Justice issued a decision regarding the appeal by the Attorney General 24 Criminal Court II, wherein it decided to: (i) declare the actions of the military criminal justice system invalid in the criminal proceedings against members of the public security force related to facts of instant case, in particular, the decisions of 1997 and 1998 wherein orders were issued and confirmed on cessation acts of the proceeding against four former military officials, as well as (ii) submitting the case to the National Human Rights Unit and the International Humanitarian Law Unit of the Attorney General's Office, for continuation with investigations. *Cf. Case of 19 Tradesmen V. Colombia. Monitoring Compliance*. Order of the Court of July 8, 2009, Considering paragraph 14.

¹³ *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs*, para. 86.b.

¹⁴ *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs*, para. 263.

contributes to making reparation to the victims and shows society that justice has been done.¹⁵

17. In view of the foregoing, the Court concludes that the measure of reparation regarding the obligation to investigate the facts of this case is pending compliance. Therefore, it considers it essential that, within the period established in Operative paragraph 2 of this Order, the State submit current, detailed and complete information on all the steps taken to ensure compliance with this measure of reparation, the results obtained, as well as a copy of the supporting documentation, so that the Court can verify that the investigations are being carried out with due diligence, in accordance with the purpose of this measure of reparation.

B. Obligation to conduct, within a reasonable period, a search for the remains of the victims, and if possible, return them to their next of kin

18. The State reported that “considering the specific and technical requirements involved in the search for remains,” the Centro Único Virtual de Identificación [Virtual Identification Center] (hereinafter “CUVI” for its acronym in Spanish) will support the Attorney General’s Office in this task. This Center will implement the “National Plan to Search for Disappeared Persons,” which consists of four phases: 1) gathering information; 2) analysis and verification of the information; 3) recovery, technical-scientific assessment and identification; and 4) final whereabouts of remains. In this regard, Colombia indicated that it had provided a copy of this document in the context of monitoring compliance with the Judgment of this Court in the case of the *Mapiripán Massacre v. Colombia*. The State described some of the procedures carried out by CUVI at the end of 2009 and throughout 2010, during the first phase of the search plan. These included taking samples, gathering information, holding meetings with the representatives and the victims, locating witnesses on the “property and areas surrounding El [D]iamante Farm [...] and in nearby hamlets and villages” and conducting verification studies on the banks of the Magdalena river. This last procedure concluded “with the suggestion to carry out further investigative studies along the banks of the river” as the previous studies “only included 15% of the area along the Magdalena River.” In January 2011, the State reported that in June 2010, CUVI and the Technical Unit of the Human Rights Investigation Group were ordered to “proceed to carry out the second phase of the search plan.” Finally, in September 2011, Colombia indicated that the Attorney General’s Office and CUVI “have carried out all the actions required to find the whereabouts of the victims” and are coordinating “the start of the implementation of phases II, III and IV of the search plan.”

19. The representatives stated that compliance with this measure of reparation “is closely linked to the investigation,” and therefore the State should gather additional statements from human sources who may indicate the whereabouts of the victims’ remains. They also noted that there has been “no significant progress” in the implementation of this measure of reparation since October 2010, as no further action has been taken in this regard. Given that “the crime was committed 24 years ago and there have been enormous delays in implementing the Search Plan,” the representatives said they “have well-founded fears that such measures are doomed to failure.”

¹⁵ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v.. Guatemala. Monitoring Compliance with Judgment*. Order to the Inter-American Court of January 27, 2009, considering para. 21, and *Case of Blanco Romero et al. v. Venezuela. Monitoring Compliance with Judgment and provisional measures*. Order of the Court of November 22, 2011, considering paragraph 10.

20. The Commission noted the procedures carried out by the State during 2010 and pointed out that, based on these, it was not possible to find “relevant and clear evidence for the identification of the victims’ mortal remains.” The Commission noted “with concern” that the search was still at the initial phase of the plan prepared by the State, and that in its last report Colombia did not mention the specific measures carried out to find the victims’ remains.

21. The Court recalls that in its Order of July 8, 2009, it considered “of vital importance to devise and develop, as soon as possible, a plan to search for the mortal remains, pursuant to specialized technical-scientific parameters, since the passage of time hinders the effective execution of this measure of reparation.” Therefore, the Court notes and appreciates the steps taken by the State to comply with this measure of reparation through the National Plan to Search for Disappeared Persons. Accordingly, based on the principle of procedural economy, the Court deems it appropriate to include in the record of this case the document containing the parameters and guidelines of said search plan, submitted to the Court in the context of monitoring compliance with the Court’s Judgment in the case of the *Mapiripán Massacre*, so that the representatives may submit any observations they consider relevant in this regard.¹⁶

22. Also, the Court points out that the State has not provided detailed information on the actions or procedures carried out after 2010 to implement the aforementioned search plan, or on the possible results obtained. Furthermore, the Court notes with concern that after nearly eight years since the notification of this Judgment, the State has still not progressed beyond the first phase (gathering information) in the implementation of the search plan. According to the information provided by Colombia, the authorities in charge of this first phase recommended that further investigative work be carried on the banks of the Magdalena River, given that the efforts carried out previously were insufficient. Likewise, the Court notes that an order was issued in June 2010 to begin the second phase of the search, but according to the information provided, this has not yet happened. The Court understands the particular difficulties involved in finding the mortal remains of the victims in this case “[o]wing to the way in which the remains of the 19 tradesmen were treated and because [at the time the Judgment was issued] more than sixteen years ha[d] elapsed since their disappearance, it is very probable that it will be impossible to find their remains [... given] the omissions of the State at the time when it was still possible that the remains of the victims could be found, has meant that locating victims’ remains is now a difficult and improbable task.”¹⁷ However, the Court recalls that in its Judgment it considered proven that “Colombia did not conduct a genuine search for the remains of the victims,” and therefore deemed it reasonable and fair to order such a measure.

23. The Court considers that, although the State has initiated the first phase of the search plan for the remains of the victims, Colombia has not complied with the measure ordered by this Court to “conduct a genuine search, making every possible effort to determine with certainty what happened to the remains of the victims and, where possible, to return these to their next of kin.”¹⁸ Despite the State’s claim that it has carried out “all

¹⁶ The representatives of the victims in this case are the Colombian Commission of Jurists and the Center for Justice and International Law (CEJIL); the representatives of the victims in the case of the *Mapiripán Massacre* are the Colectivo de Abogados [Lawyers’ Association] “José Alvear Restrepo” and CEJIL.

¹⁷ *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109*, para. 270.

¹⁸ *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109*, para. 271.

actions aimed at discovering the whereabouts of the victims," the Court considers that after more than twenty-four years since the events took place and nearly eight years since notification of the Judgment that is being monitored, there has been no significant progress in the implementation of this measure of reparation. The Court reminds the State of the importance of complying with this measure, given that it provides moral satisfaction and allows the victims' next of kin to bring closure to the mourning that they have experienced throughout these years.¹⁹ Based on the foregoing, the Court considers that this obligation is pending compliance. Bearing in mind that the passage of time makes it more difficult to implement this measure of reparation effectively, the State must immediately take the necessary steps to comply with this measure of reparation in an effective and diligent manner. Likewise, in order for the Court to monitor compliance, the State must submit complete and current information, forwarding copies of the relevant documents concerning the measures adopted for effective and full compliance with this point, within the period established in Operative Paragraph 2 of this Order.

C. Obligation to erect a monument in memory of the victims and, in a public ceremony in the presence of the victims' next of kin, place a plaque with the names of the 19 tradesmen

24. Regarding compliance with this measure of reparation, in its reports of December 2009 and January and September 2011, the State reiterated its apologies for "the delays," which it attributes "mainly [to] administrative procedures," as well as to "the complexity" involved in complying with this measure. Despite these difficulties, Colombia reported that in January 2010 it had contracted the artist Juan Arreaza to design the monument (sculpture), by mutual agreement with the representatives, and that the work was completed at the beginning of 2011. However, in terms of the structure on which the monument would be installed, the State reported that difficulties and administrative obstacles had arisen.

25. In their observations to these reports, the representatives mentioned that, after several requests for information, they held a meeting on December 15, 2010 with State representatives who informed them of the progress made in creating the sculpture, but did not provide any information on the progress of the civil construction work. For this reason, they expressed concern over "how and under what conditions the sculpture would be 'stored'," while the civil construction work begins and is completed. Six months after this meeting, the representatives reiterated that, despite several requests, the State had still not provided them with any information on the progress made in the construction work. Furthermore, they expressed concern because "unofficial sources" had reported that the completed sculpture could be "stored at a military unit stationed in [Bucaramanga]." Subsequently, on June 24, 2011, the representatives informed the Court, *inter alia*, that the State had transported the completed sculpture from Bogotá to Bucaramanga, without informing the family members, despite their repeated requests for information on the matter. They also stated that the sculpture had been stored at the Fifth Army Brigade headquarters in the city of Bucaramanga, where they could not enter. The representatives pointed out that this had caused "deep anger and fear among the next of kin of the 19 tradesmen massacred," which "even if temporary," "constitute[d] an event that revictimizes the family members," given that "military agents attached to the Fifth Brigade participated in the massacre and their criminal acts remain unpunished."

¹⁹ Cf. *Case of "Las 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 Blanco Romero et al. v. Venezuela. Monitoring compliance with Judgment and provisional measures*. Order of the Inter-American Court of November 22, 2011, considering paragraph 13.

26. On June 29, 2011, following the instructions of the President of the Court, the State was asked to present a report on the matters referred to by the representatives. In this report, the State indicated that the National Army had indeed transported the monument to Bucaramanga,²⁰ where it was being stored “provisionally” at the base of the National Army’s Fifth Brigade to “guarantee its security” “while the civil construction and installation was under way,” given that “on several occasions” the artist had expressed the need to move it from his workshop. The State regretted that the fact that the National Army had moved and stored the monument “had been interpreted as an act that revictimized the family members, and not as harmonious cooperation between State agencies.” In its last report, Colombia reiterated “its most sincere apologies” for the difficulties that have affected compliance with this measure and indicated that it is carrying out internal procedures to complete its implementation. To this end, it has made arrangements with the Governor’s Office of Santander, which has the financial resources to carry out the civil construction works, but “is awaiting the completion of the procedure in order to implement the work.”

27. In their observations to this report, the representatives argued that “the State has shown a lack of clarity, transparency and communication” in complying with this measure of reparation. They also reported that they had approached several State institutions to request that the sculpture be stored at a civilian facility while the construction work is completed,²¹ yet in November 2011, the work remained at the military base. Given this situation, the representatives requested that the Court require the State, *inter alia*, to take the necessary steps to have the sculpture stored “as soon as possible” at a civilian institution, under conditions that would guarantee its proper conservation; to begin and complete, in a satisfactory manner, the civil construction work without further delays, and to “establish a regular system to follow up on the implementation of [this] measure of reparation.” Furthermore, in the communications of June 27 and 28, 2011, two family members of the disappeared victims directly addressed the Court to express their “powerlessness,” “sadness,” and “surprise and anger” at the way in which the State had transferred the monument and stored it at the headquarters of the Fifth Army Brigade in the city of Bucaramanga. Subsequently, certain family members of most of the disappeared victims sent communications directly to this Court, expressing their dismay at what had happened with the monument and stating that this caused them anxiety and increased their humiliation. They requested that the State be required to remove the monument from the premises of the Fifth Brigade, a “place that offends them and offends the memory of [their] next of kin,” and to relocate it at another institution in order to have a “place that is open” where the family members can gather to “ease their pain” and the “continuous mourning,” resulting from the disappearance of their family members.

28. The Commission regretted that, despite the time elapsed, the civil construction work has not begun. Regarding the transfer of the monument and its storage at the base of the

²⁰ The State reported that the National Army took charge of transporting the monument because it had suitable machinery to transport it, given the scale of the work, and because “the private transporters who were consulted required licenses and special permits.”

²¹ The representatives indicated that: a) On July 25, 2011, they sent a letter to the Vice-President of the Republic “as the highest authority” of the Presidential Human Rights Program, but July 29, 2011, they were informed that their request was forwarded to the National Commission for Reparation and Reconciliation; b) on October 14, 2011, they sent a communication to the Governor of the Department of Santander, requesting his intervention, without receiving a response; c) on October 6, 2011, the representatives issued a communiqué in the context of the 24th anniversary of the events in this case, calling on the State to comply with this measure; d) on October 7, 2011, the family members of the victims filed a right to petition before the Governor of the Department of Santander, without receiving an answer. Finally, the representatives reported that during the first week of October 2011, they held a meeting with officials of the Presidential Human Rights Program “who promised to make arrangements for the transfer of the monument to a civilian facility.”

National Army's Fifth Brigade, the Commission noted "with concern" that this matter had not been reported to the representatives, and that neither family members nor their representatives had access to the sculpture. In this regard, the Commission recalled the importance of this type of reparation measure, "for which the victims' expectations and needs should be taken into consideration and their proper participation should be assured." Accordingly, the Commission requested that the State find suitable means to transfer the sculpture to an appropriate civilian institution for safekeeping and to take the necessary steps so that the civil construction work can begin as soon as possible, ensuring that the victims have access to the work and can participate in the process.

29. Before assessing compliance with this measure of reparation, the Court deems it appropriate to rule on the transfer of the sculpture and its storage at a military facility and the corresponding requests of the representatives on the matter, based on the information provided by the parties.

30. In this respect, the Court takes cognizance of the grievances and distress expressed by the representatives and the victims' next of kin, regarding the fact that they were not informed about the circumstances of the transfer and subsequent placement of the sculpture; that they do not have access to it, and that they have not received an answer from the State authorities contacted to resolve this situation. Given the State's obligation to allow the victims' next of kin to participate in this measure of reparation, the Court does not consider it justified that they were not properly informed, consulted or allowed to participate in the decision to transfer the sculpture and provisionally store it at the military facility. The Court emphasizes that, prior to its transportation, the representatives requested information from the authorities responsible for complying with this measure of reparation and expressed their concern over how the sculpture would be stored once it was completed, on at least three occasions, without a receiving an answer from the State in this regard.²² Furthermore, despite the fact that the representatives, through the Court, expressed their concern to the State over "unofficial" information indicating that the sculpture would be "stored at the military facility," Colombia transported the work, stored it at the military base and only reported this to the victims and the representatives after this had occurred.

31. The Court takes into account the State's argument that the participation of military personnel is nothing more than "harmonious cooperation between State agencies," so that "joint responsibility exists regarding compliance with this [measure of reparation]." However, the Court does not consider it reasonable or necessary to subject the victims to a situation where they feel re-victimized or humiliated, inasmuch as the monument in memory of their relatives was stored at the facility of the State security forces considered responsible for the violations committed against their next of kin, to which they apparently do not have access. The State did not give any reason as to why the sculpture could not be stored at another institution of a civil nature, nor did it mention any steps taken to find another place to store it, with the consent of the family members. Although Colombia has maintained that the sculpture was being stored at the Fifth Brigade base on a provisional basis, it did not indicate an approximate date of completion for the civil construction work and a year has passed since the sculpture was moved to the military facility. Moreover, as

²² Communication of the representatives of October 16, 2009, addressed to the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, communication of the representatives of November 24, 2010 addressed to the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, communication of the representatives of December 21, 2010, addressed to the Inter-American Court reporting on a meeting held on December 15, 2010 with the State, communications of March 29 and April 29, 2011, cited in the brief of June 3, 2011 of the representatives, and brief of June 3, 2011 containing the representatives' observations.

of the date of this Order, nearly seven years have passed since the date set for complying with this obligation expired, and yet construction work has not even begun on the structure on which the monument will be placed. Therefore, the Court considers it appropriate to require the State to remove the sculpture from the premises of the Fifth Brigade of the National Army as soon as possible, and to transport it and store it at a civil institution, under conditions that ensure its preservation and safekeeping until it can be installed in a place agreed upon by the parties.

32. The Court recalls that in the Judgment it ordered Colombia and the victims' next of kin to reach an agreement on the place where the monument is to be erected.²³ Therefore, the Court considers that the place where the sculpture is to be temporarily housed until the completion of the construction work should also be agreed with the victims' next of kin or their representatives, given the time that has elapsed and the fact that the agreed site still is not available due to administrative delays attributable to the State. Likewise, the Court calls on the parties to establish more effective communication mechanisms that allow for a more fluid and productive exchange of information regarding compliance with this measure of reparation.

33. With respect to the general status of compliance with this measure of reparation, the Court appreciates that the State has taken the necessary steps for the creation of the monument, with the agreement of the victims' next of kin and that the sculpture has been completed. Nevertheless, it notes that nearly seven years have passed since the expiry of the deadline established for complying with this measure of reparation without it being completely fulfilled. Based on the latest information provided by the State, the building of the structure on which the monument will be erected has not begun, though the authorities in charge of the project are coordinating with the Governor's Office of Santander, which has the financial resources, but is "awaiting the completion of the [relevant] administrative procedure." In this regard, the Court recalls that in its Order of 2009 it considered that "the central and local authorities must coordinate activities in order to finish the building and determine the location of said monument in order to fully comply with this measure of reparation."

34. In view of the foregoing considerations, the Court finds that this measure of reparation is still pending compliance. The Court takes cognizance of the apology offered by the State; however, it considers it imperative that the State move forward with the implementation of this measure and take all the steps and actions necessary to comply with it, as soon as possible, given its symbolic value for the victims, and also to ensure that similar acts are not repeated in the future. In particular, the Court considers that the State must intensify its efforts to advance with the construction of the monument, remove the sculpture from the military facility and install it permanently at the place agreed upon by the parties. Accordingly, the Court requests that the State, within the term established in Operative Paragraph 2 of this Order, provide the Court with updated, complete and detailed information on the steps taken to comply with this measure of reparation, as well as those required in this Order.

D. Obligation to provide, free of charge, through its specialized health institutions, the medical and psychological care required by the next of kin of the victims

35. The Court received information from the State, the representatives and the Inter-

²³ Cf. *Case of 19 Tradesmen v. Colombia, Merits, Reparations and Costs*, para. 273.

American Commission on the implementation of this measure of reparation (*supra* having seen paragraph 8). The Court will issue a ruling on compliance with this measure of reparation in due course, in the context of the joint monitoring of compliance with this measure carried out in nine Colombian cases.

E. Obligation to establish all the necessary conditions for members of the family of the victim Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and to cover the moving costs incurred

36. The State pointed out that it has not received information indicating that the Flórez Contreras family wishes to return to Colombia, and reiterated its willingness to coordinate with the representatives and the Florez family regarding the necessary measures to ensure their return, once they express their intention to do so. For their part, the representatives did not submit information or comments on the implementation of this measure of reparation, while the Commission only took note of the information provided by the State, without making any specific observations.

37. This Court appreciates the commitment made by the State to create and guarantee the necessary conditions to enable the members of the Florez family who are in exile to return to Colombia, if they so wish. Similarly, the Court also notes that the representatives have not mentioned this point since the Order of July 8, 2009.

38. Bearing in mind the willingness expressed by Colombia to comply with this measure, the Court deems it pertinent to require the representatives, for the last time, to report on whether the members of the Florez family wish to return to Colombia and, if so, to state the place to which they wish to return and the conditions that they consider necessary to do so. The representatives shall submit such information within the period established in Operative Paragraph 3 of this Order, so that the Court may determine whether it is necessary to continue monitoring this measure.

F. Obligation to pay the amounts established in the Judgment for loss of earnings for each of the 19 victims, the expenses incurred by the next of kin of eleven victims and compensation for non-pecuniary damages

39. The State indicated that it has already “paid 100% of the compensation” ordered in the Judgment, despite the fact that the Court has only recognized compliance with 90%, due to the observations of the representatives. In its last report, Colombia requested that the Court declare compliance “in full” with this measure of reparation, given that the representatives have not communicated specific observations on this point.

40. In its brief of November 30, 2011, the representatives noted that the “lack of payment” continues for the family members who are not included in the Judgment but who “have the same characteristics as those who were acknowledged as beneficiaries,” some of whom have filed applications before the contentious-administrative jurisdiction. However, they did not refer to the points pending compliance with this measure of reparation in any of the briefs containing their observations.

41. The Commission indicated that it needed information from the representatives “to make informed observations on the matter.”

42. With regard to the representatives' arguments regarding the family members of the victims who are not included in the Judgment, this Court reiterates the comments made in the Order of July 8, 2009, that "it is not appropriate to reopen the stage on merits and reparations," which included as family members and beneficiaries of the victims those individuals indicated as such by the Inter-American Commission, based on the information provided during the international proceeding, as well as those identified based on the evidence provided to the Court and included in the relevant chapter on beneficiaries to receive compensation. The Court recalls that the Judgment only left open the possibility that the family members of three of the victims could be subsequently identified, since the Court did not have the necessary information to identify them at the time when the Judgment was issued. Once again, the Court points out that the family members identified by the representatives are not related to these three victims. Consequently, the Court takes note that these persons have approached the competent Colombian authorities to demand what they believe to be their rights in relation to the victims in this case, but advises that it will not monitor these proceedings or their results in the context of monitoring compliance with the Judgment.

43. Furthermore, the Court recalls that in its last Order it established that "before considering that this point has been satisfied, [...] it deem[ed] it pertinent to require detailed information" regarding: (i) the alleged incorrect distribution of the indemnities distributed by the Attorney General's Office in the event of the death of some of the beneficiaries, and (ii) an alleged error in the payment made to Mrs. Myriam Mantilla Sánchez. In this regard, the Court notes that neither the State nor the representatives have provided information on this situation. However, contrary to the State's assertion, its obligation to report to the Court on this matter did not depend on the representatives submitting additional observations related to this measure of reparation. According to the aforementioned Order, the State should review the payment made to Mrs. Myriam Mantilla Sánchez and, if appropriate, grant her the amount due. Otherwise it should provide the Court with a relevant explanation and submit the documents supporting compliance with the payment ordered in the Judgment, taking into account the observations already presented by the representatives on the matter, prior to the Order of July 2009²⁴. Likewise, with regard to the compensation paid by the Attorney General's Office, it is up to the State to ascertain and inform the Court whether the payments distributed by that body are consistent with the criteria and terms established in paragraphs 230 and 231 of the Judgment.

44. In view of the foregoing, the Court reiterates that this point is still pending compliance and considers it necessary that the State submit detailed and complete information on the aspects queried or noted by the representatives in relation to the payments made by the Attorney General's Office and the payment made to Mrs. Myriam Mantilla Sánchez, which are pending evaluation and appraisal by this Court. Likewise, taking into account the comments made by the State, the Court considers it appropriate to require the representatives, in presenting their observations to the State's report (*infra* Operative paragraph 3), to refer in detail to the two aforementioned matters pending evaluation by the Court. In particular, the Court requests that the representatives indicate whether the errors mentioned in the payment of the indemnities have been corrected or, if applicable, how these could be corrected and the actions required to remedy the situation.

²⁴ Cf. *Case of 19 Tradesmen v. Colombia. Monitoring Compliance with Judgment*. Order of the Court of July 8, 2009, considering paragraph 58.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and pursuant to Articles 33, 62(1), 62 (3) and 68(1) of the American Convention on Human Rights, Article 30 of the Statute of the Court, and Articles 31 and 69 of its Rules of Procedure,

DECLARES:

1. That it will keep open the procedure for monitoring compliance with the measures pending full compliance, namely:

a) Within a reasonable time, the State shall investigate effectively the facts of this case, in order to identify, prosecute and punish all the masterminds and perpetrators of the violations committed against the 19 tradesmen, for the criminal and any other effects that may arise from the investigation into the facts, and the result of this measure shall be disseminated publicly (*Operative paragraph 5 and paragraphs 256 to 263 of the Judgment*);

b) Within a reasonable time, the State shall conduct a genuine search during which it makes every possible effort to determine with certainty what happened to the remains of the victims and [...] return them to their next of kin (*Operative paragraph 6 and paragraphs 270 and 271 of the Judgment*);

c) The State shall erect a monument in memory of the victims and, in a public ceremony in the presence of the next of kin of the victims, [...] place a plaque with the names of the 19 tradesmen (*Operative paragraph 7 and paragraph 273 of the Judgment*);

d) The State shall provide, free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims (*Operative paragraph 9 and paragraphs 277 and 278 of the Judgment*);

e) The State shall create all the necessary conditions for the members of the family of the victim Antonio Flórez Contreras, who are in exile, to return to Colombia, if they so wish, and cover the moving costs they may incur (*Operative paragraph 10 and paragraph 279 of the Judgment*), and

f) The State shall pay the amounts established in the judgment for loss of earnings for each of the 19 victims, the expenses incurred by the next of kin of eleven victims, and non-pecuniary damages²⁵ (*Operative paragraphs 12, 13, 14, 15*

²⁵ The Court declared that this measure of reparation had been partially complied with in its Order of July 10, 2007. *Cf. Case of 19 Tradesmen v. Colombia. Monitoring Compliance with Judgment*. Order of the Court of July 10, 2007, Considering paragraph 9.

and paragraphs 230, 231, 233, 234, 235, 240, 241, 242, 243, 248, 249, 250, 251 and 252 of the Judgment);

2. That in accordance with the provisions of Considering paragraph 35 of this Order, the Court shall monitor, jointly, through the monitoring of compliance with the measure of reparation on medical and psychological care ordered in the nine Colombian cases, the State's obligation to provide, free of charge and immediately, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims (*Operative Paragraph 9 of this Judgment*).

AND DECIDES:

1. To require the State of Colombia to adopt all the measures necessary to effectively and promptly comply with the aspects pending compliance of the Judgment on Merits, Reparations and Costs delivered in the case of the 19 Tradesmen, as mentioned in Declarative paragraph 1.

2. To order the State of Colombia to submit to the Inter-American Court of Human Rights, no later than October 12, 2012, a report describing all the measures adopted in compliance with the reparations pending fulfillment and, if applicable, explaining the reasons why it has not been able to comply with the measures that are still pending, under the terms of considering paragraphs 17, 22, 23, 34 and 44.

3. To request the representatives of the victims and their families and the Inter-American Commission on Human Rights to submit any observations they deem necessary to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as of the receipt of said report. In their observations, the representatives must include the information requested in considering paragraphs 38 and 44, as well as any observations deemed pertinent in relation to considering paragraph 21.

4. To require the Secretariat of the Court to notify this Order to the State of Colombia, the Inter-American Commission on Human Rights, and the representatives of the victims and their families.

Manuel E. Ventura Robles
Acting President

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel E. Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary