

Heliodoro Portugal v. Panama

ABSTRACT¹

While this is one of the many cases in which the Court dealt with a disappearance, it is one of the few dealing with disappearances in Panama. Besides ruling on violations of the American Convention, the Court also found violations of the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention to Prevent and Punish Torture.

I. FACTS

A. Chronology of Events

October 11, 1968: A coup d'état organized by Panamanian National Guard officers overturns the democratically elected President of Panama, Dr. Arnulfo Arias.² The National Guard dissolves the National Assembly and installs a Provisional Governing Junta presided by the military.³ The State experiences the suspension of individual rights, suspension of several Articles of the Constitution, censure of the press, suppression of political parties and activities, imposition of a curfew, raiding of property, arrests, and detentions.⁴

May 14, 1970: Mr. Heliodoro Portugal is thirty-six years old and living with Ms. Graciela de León Rodríguez and their two children, Patria and Franklin Portugal.⁵ He works as a typesetter.⁶ Mr. Portugal is a former student leader and proponent of the Movimiento de Unidad Revolucionaria.

1. Raya Marinova, Author; Kathryn Benson, Sarah Frost, Shamin Rostami, & Alyssa Rutherford, Editors; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 186, ¶ 84 (Aug. 12, 2008); Heliodoro Portugal v. Panama, Petition to the Court, Inter-Am. Comm'n H.R., Case 12.408, ¶ 61 (Jan. 23, 2007).

3. Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs, ¶ 84; Heliodoro Portugal v. Panama, Petition to the Court, ¶ 63.

4. Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs, ¶ 84.

5. Heliodoro Portugal v. Panama, Petition to the Court, ¶ 71.

6. *Id.*

naria (“Revolutionary Unity Movement”), a movement opposed to the military regime.⁷ He had been arrested and detained by the National Guard in 1968 and was freed in 1969.⁸

While Mr. Portugal sits in the Coca Cola Café in Santa Ana Park in Panama City, a red van pulls up and two men in civilian clothes step out.⁹ The two men arrest Mr. Portugal, force him into the van, and drive away.¹⁰

June 1970: A police agent visits the Portugal residence and tells the family that Mr. Portugal sent him to tell them not to worry and that Mr. Portugal would be released soon.¹¹

October 1970: Mr. Portugal is taken from “Casa de Miraflores,” one of the country’s secret interrogation and torture centers during the first years of the military regime, to the Tocumén Barracks.¹² Mr. Portugal is never seen again.

1977: The Inter-American Commission on Human Rights visits Panama and asks the State about the location of several individuals that have disappeared, including Mr. Portugal.¹³ The State responds that Mr. Portugal is a “well-known member of the Panamanian Communist Party” and that it has no information about his whereabouts.¹⁴

1987-1988: Ms. Patria Portugal goes to the Panamanian National Human Rights Committee to report the disappearance of Mr. Portugal.¹⁵

December 20, 1989: The United States invades Panama and helps to unseat General Manuel Antonio Noriega from power.¹⁶ Democracy is subsequently restored.¹⁷

7. *Id.* ¶ 72.

8. *Id.*; *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, ¶ 87.

9. *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, ¶ 88.

10. *Id.*; *Heliodoro Portugal v. Panama*, Petition to the Court, ¶ 78.

11. *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, ¶ 89.

12. *Id.*

13. *Id.* ¶ 90.

14. *Id.*

15. *Id.* ¶ 91.

16. *Id.* ¶ 84.

17. *Id.*

May 9, 1990: Panama accepts the Inter-American Court of Human Rights' jurisdiction.¹⁸

May 10, 1990: Ms. Patria Portugal reports her father's disappearance before the Office of the First Superior Prosecutor of the First Judicial District of Panama.¹⁹ She explains that she was unable to file a complaint before the Attorney General's Office at the time of Mr. Portugal's disappearance because of the political situation at that time.²⁰

November 8, 1991: Judicial authorities provisionally dismiss the case on the grounds that "no enmity was established between the ideas of Mr. Portugal and those of the government in power at the time."²¹

September 21, 1999: The Attorney General's Office orders excavations in the Tocumén Barracks in search of the remains of another individual who disappeared twenty years prior.²² Human remains are found, but the Attorney General's Office has no indication that the remains belong to Mr. Portugal.²³

September 24, 1999: Forensic examination of the remains found at the Tocumén Barracks reveals signs of "brutal" mistreatment.²⁴ Remnants of adhesive tape found on the head and skull fractures suggest the person was "severely beaten" in that area.²⁵ The left leg is broken.²⁶ The severity of the signs of torture and physical injuries suggests that these injuries were the cause of death.²⁷

December 1999: In an interview with a journalist, a witness describes his imprisonment with Mr. Portugal in a separate room at a location he

18. *Id.* ¶ 93.

19. *Id.* ¶ 94.

20. *Id.*

21. *Heliodoro Portugal v. Panama*, Petition to the Court, Inter-Am. Comm'n H.R., Case 12.408, ¶ 91 (Jan. 23, 2007).

22. *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, ¶ 95.

23. *Id.*

24. *Heliodoro Portugal v. Panama*, Petition to the Court, ¶ 151.

25. *Id.*

26. *Id.*

27. *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, ¶ 96.

thinks is near the “Casa de Miraflores.”²⁸ The witness states that they were taken blindfolded from Miraflores to the Tocumén Barracks around October 9 or 10, 1970, and that he had seen Mr. Portugal on the following day.²⁹

August 22, 2000: DNA testing reveals that the human remains found at the Tocumén Barracks belong to Mr. Portugal.³⁰

August 30, 2000: The Public Prosecution Service requests that the judicial authorities reopen the case and turn over Mr. Portugal’s remains to his family.³¹

September 6, 2000: Mr. Portugal’s remains are buried.³²

September 4, 2001: The Third Prosecutor’s Office announces that an official DNA test has been performed on the remains found at the Tocumén Barracks and that the test establishes that they are not Mr. Portugal’s remains.³³

October 30, 2001: An expert in DNA testing reconfirms the validity of the first DNA test, which establishes that the remains do indeed belong to Mr. Portugal.³⁴

The exact date of Mr. Portugal’s death is still unknown.³⁵ At the time of the Court’s decision, the criminal proceeding is still pending and the perpetrators of his murder have not yet been convicted.³⁶

B. Other Relevant Facts

Forced disappearances are a regular practice of the State at the time of Mr. Portugal’s arrest.³⁷ They are carried out primarily by members of the security forces.³⁸ During the period, the military regime pre-

28. *Id.* ¶ 89.

29. *Id.*

30. *Id.* ¶ 95.

31. *Heliodoro Portugal v. Panama*, Petition to the Court, ¶ 95.

32. *Id.*

33. *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, ¶ 97.

34. *Id.*

35. *Id.* ¶ 29.

36. *Id.* ¶ 2.

37. *Heliodoro Portugal v. Panama*, Petition to the Court, ¶ 73.

38. *Id.*

vents access to justice and people are afraid to seek judicial recourse.³⁹

Today, there are at least forty documented cases of missing individuals who were arrested by State agents.⁴⁰ There are seventy documented cases of murder committed by State agents.⁴¹ The acts have occurred without the intervention of judicial authority.⁴²

II. PROCEDURAL HISTORY

A. Before the Commission

May 31, 2001: Ms. Patria Portugal and the Center for Justice and International Law (“CEJIL”) present a petition on behalf of Mr. Portugal to the Inter-American Commission on Human Rights.⁴³

October 24, 2002: The Commission declares the petition admissible.⁴⁴

October 27, 2002: The Commission adopts Merits Report No. 103/05.⁴⁵ The Commission concludes that the State has violated provisions of the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man, the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention to Prevent and Punish Torture.⁴⁶

With respect to the American Convention, the Commission finds the State violated Article 4 (Right to Life) for failing to guarantee the right to life of Mr. Portugal, since he suffered forced disappearance and an execution while in the custody of the State.⁴⁷

The Commission finds the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 5(2) (Prohibition of Torture and Cruel, Inhumane or Degrading Treatment) because it failed to respect Mr. Portugal’s physical, mental, and moral integrity and to

39. Heliodoro Portugal, Preliminary Objections, Merits, Reparations and Costs, ¶ 92.

40. *Id.* ¶ 85.

41. *Id.*

42. *Id.*

43. Heliodoro Portugal v. Panama, Admissibility Report, Report No. 72/02, Inter-Am. Comm’n H.R., Case No. 12.408, ¶ 1 (Oct. 24, 2002).

44. *Id.* ¶ 32(1).

45. Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs, ¶ 1 n.1.

46. *Id.*

47. Heliodoro Portugal v. Panama, Petition to the Court, Inter-Am. Comm’n H.R., Case 12.408, ¶¶ 172-175 (Jan. 23, 2007).

respect the inherent dignity of a human person.⁴⁸

The Commission finds the State violated Articles 7(1)-(6) (Right to Personal Liberty) because the State's arrest and detention of Mr. Portugal were not made with a warrant or under any suspicion that Mr. Portugal committed a crime, and were made for reasons incompatible with the basic rights of individuals.⁴⁹ Mr. Portugal was not informed of the reasons for his detention or of his rights, nor was his family.⁵⁰ The State further did not provide Mr. Portugal the protection of any judicial authority to resolve the reasons for his detention.⁵¹

Lastly, the Commission finds the State violated Article 1 (Obligation to Respect Rights), Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) because it failed to make sufficient internal investigations to discover what happened to Mr. Portugal and to punish responsible parties within a reasonable period of time.⁵²

With respect to the American Declaration of the Rights and Duties of Man, the Commission finds the State was responsible for violating Article 1 (Right to Life, Liberty, and Personal Security), Article 15 (Right of Protection from Arbitrary Arrest), and Article 16 (Right to Due Process of Law).⁵³

With respect to the Inter-American Convention on Forced Disappearance of Persons, the Commission finds the State's failure to enact laws that define the forced disappearance of a person as an offense deserving of punishment and continuing as long as the fate or location of the victim remain unknown violates Article 3 (Obligation to Adopt Legislative Measures).⁵⁴ The Commission also finds the State violated Article 2 (Definition of Forced Disappearances of the Inter-American Convention on Forced Disappearance of Persons).⁵⁵

Finally, with respect to the Inter-American Convention to Prevent and Punish Torture, the Commission considers that the State's failure to identify, prosecute, and punish responsible parties when there was good reason to believe that torture had been committed against Mr. Portugal constituted a violation of Articles 1 (Obligation to Prevent and Punish

48. *Id.* ¶ 143.

49. *Id.* ¶¶ 120, 124.

50. *Id.* ¶ 125.

51. *Id.* ¶¶ 128-129.

52. *Id.* ¶ 213.

53. *Id.* ¶ 28; *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 186, ¶ 1 n.1 (Aug. 12, 2008).

54. *Heliodoro Portugal v. Panama*, Petition to the Court, ¶¶ 217-220.

55. *Id.* ¶ 28; *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, ¶ 1 n.1.

Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute).⁵⁶

The Commission makes several recommendations to the State.⁵⁷ First, it recommends that the State identify, prosecute, and punish the responsible parties.⁵⁸

Second, it recommends that the State conduct a complete, impartial, and effective investigation of the impunity and lack of results surrounding Mr. Portugal's case.⁵⁹

Third, it recommends that the State provide professional rehabilitative care to Ms. Graciela de León de Rodríguez, Mr. Portugal's wife at common law, and her two children, Ms. Patria Portugal and Mr. Franklin Portugal.⁶⁰

Fourth, it recommends that the State honor the memory of Mr. Portugal by publically acknowledging responsibility for the "grave violations" inflicted against him.⁶¹ The State should make an act of "official homage," covered by national media outlets, as well as name a street, school, or other public place after him.⁶² The Commission recommends that the family should be consulted and should agree to the carrying out of these measures.⁶³

Finally, it recommends that the State enact legislation and other laws necessary for the proper investigation of and punishment for similar violations.⁶⁴

B. Before the Court

January 23, 2007: The Commission submits the case to the Court after the State fails to adopt its recommendations.⁶⁵

56. Heliodoro Portugal, Petition to the Court, ¶¶ 215-216; Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs, ¶ 1 n.1.

57. Heliodoro Portugal v. Panama, Petition to the Court, ¶ 29.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 186, ¶ 1 n.1 (Aug. 12, 2008).

1. Violations Alleged by Commission

Article 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearance of Persons.⁶⁶

To the detriment of Mr. Portugal:

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.⁶⁷

To the detriment of Ms. Graciela de León de Rodríguez, Ms. Patria Portugal, and Mr. Franklin Portugal:

Article 5 (Right to Humane Treatment)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.⁶⁸

2. Violations Alleged by Representatives of the Victims⁶⁹

Same Violations Alleged by Commission, plus:

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.⁷⁰

Article 1 (Obligation to Prevent and Punish Torture)

66. *Id.* ¶ 3.

67. *Id.*

68. *Id.*

69. Ms. Viviana Krsticevic, Ms. Soraya Long, Ms. Gisela De León, and Ms. Marcela Martino of CEJIL serve as representatives of Mr. Portugal and his family. *Id.* ¶ 4.

70. *Id.*

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.⁷¹

To the detriment of Mr. Portugal and his family:

Article 13 (Freedom of Thought and Expression) of the American Convention.⁷²

To the detriment of Mr. Román Kriss and Ms. Patria Kriss, Mr. Portugal's grandchildren:

Article 5 (Right to Humane Treatment) of the American Convention.⁷³

June 26, 2007: The State submits preliminary objections to the admissibility of the application and the Court's jurisdiction.⁷⁴ The State contends that the application is inadmissible due to a failure to exhaust domestic remedies, since Mr. Portugal's family could seek to intervene in criminal investigations and the proceedings flowing from them under Panamanian Judicial Code.⁷⁵ The State also objected that the Court lacks competence either *ratione temporis* or *ratione materiae*.⁷⁶

August 12, 2008: The Court unanimously dismisses the State's preliminary objection regarding the alleged failure to exhaust domestic remedies.⁷⁷

III. MERITS

A. *Composition of the Court*⁷⁸

Diego García-Sayán, President

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* ¶ 5.

75. *Id.* ¶¶ 5, 16.

76. *Id.* ¶ 5.

77. *Id.* ¶ 17.

78. By reason of *force majeure*, Judge Cecilia Medina Quiroga and Deputy Secretary Emilia Segares Rodríguez are unable to participate in the deliberation and signing of this Judgment. *Id.* at n.*.

Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

August 12, 2008: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁷⁹

The Court unanimously dismissed the State's first preliminary objection,⁸⁰ because:

*The Court found that a victim's family does not need to file a complaint or intervene in criminal proceedings in order to exhaust domestic remedies, especially when the criminal proceedings relate to a forced disappearance, which the State must investigate ex officio.*⁸¹

The Court unanimously partially admitted and partially dismissed the second preliminary objection of the Court's competence *ratione temporis*,⁸² because:

*First, the Court declared it lacks jurisdiction over Mr. Portugal's extrajudicial execution because the offense was instantaneous and occurred prior to May 9, 1990, the date on which the State accepted the jurisdiction of the Court.*⁸³ *However, the Court determined it does have jurisdiction over Mr. Portugal's forced disappearance because the offense is of a continuing or permanent nature; thus, the Court may rule on it even though the offense commenced prior to the date on which the State accepted the jurisdiction of the Court.*⁸⁴

The Court unanimously dismissed the State's second preliminary objec-

79. *Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs.*

80. *Id.* ¶ 17.

81. *Id.* ¶ 16.

82. *Id.* ¶ 275(2).

83. *Id.* ¶¶ 30-32.

84. *Id.* ¶ 34.

tion regarding the Court's competence *ratione materiae*,⁸⁵ because:

*The Court declared it has jurisdiction to decide the State's alleged failure to comply with its affirmative obligation to adapt its domestic law to the Convention, as well as its obligation not to enact laws that are incompatible with the Convention.*⁸⁶

The Court found unanimously that Panama had violated:

Article 7 (Right to Personal Liberty), in relation to Article 1(1) of the American Convention, together with Article 1 (Obligation to Adopt Measures) in relation to Article 2 of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Heliodoro Portugal,⁸⁷ because:

Article 7 (Right to Personal Liberty) of the American Convention establishes that every person has the right to personal liberty and that no person shall be subject to arbitrary arrest or imprisonment.⁸⁸ Furthermore, Article 1 (Obligation to Adopt Measures) of the Inter-American Convention on Forced Disappearance of Persons confers upon states the obligation not to practice or tolerate the forced disappearance of persons, and to punish those persons who commit the crime of forced disappearance of persons.⁸⁹

Forced disappearance is a continuing and multiple offense consisting of: deprivation of an individual's liberty by State agents or third parties acting with the acquiescence of the State; the State's refusal to acknowledge such deprivation or provide information on the whereabouts of the person; and the State's interference with the victim's recourse to legal remedies and procedural guarantees.⁹⁰ This deprivation of liberty continues until the victim's fate and whereabouts are established.⁹¹

The offense must be considered by the totality of the circumstances.⁹²

85. *Id.* ¶ 275(3).

86. *Id.* ¶¶ 57, 61.

87. *Id.* ¶ 275(4).

88. *Id.* at n.32.

89. *Id.* at n.34.

90. *Id.* ¶ 106.

91. *Id.* ¶ 112.

92. *Id.* ¶¶ 112-113.

Here, Mr. Portugal was surrounded by members of the Panamanian National Guard who took him to an unknown destination without explanation.⁹³ That deprivation of liberty and the absence of information regarding his whereabouts continued until his remains were identified in 2000.⁹⁴ The State's subsequent failure to investigate into the alleged torture of Mr. Portugal is subsumed in its failure to investigate the forced disappearance.⁹⁵

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the American Convention, to the detriment of Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal,⁹⁶ because:

*Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the American Convention establishes that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, while Article 25(1) (Right of Recourse Before a Competent Court) of the American Convention indicates that everyone has the right to simple and prompt recourse to a competent court or tribunal for protection against acts that violate the person's fundamental rights recognized by the State's constitution or laws.*⁹⁷

*Although thirty-eight years had elapsed since the disappearance of Mr. Portugal and eighteen years had elapsed since the State's acceptance of the Court's jurisdiction, the State had the duty to investigate the human rights violations ex officio.*⁹⁸ *At the time of this proceeding, Mr. Portugal's next of kin still do not know the truth about what happened to Mr. Portugal or who is responsible for his disappearance.*⁹⁹

*The judicial authorities failed to conduct an effective and timely investigation of the reported facts.*¹⁰⁰ *This delay was unreasonable and resulted in the denial of justice, as well as a violation of the right of access to*

93. *Id.* ¶ 113.

94. *Id.*

95. *Id.* ¶ 159.

96. *Id.* ¶ 275(5).

97. *Id.* at nn.79-80.

98. *Id.* ¶ 143.

99. *Id.* ¶ 147.

100. *Id.* ¶ 152.

*justice of the next of kin, especially considering that the State had only recently reopened the case in 2007.*¹⁰¹

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the American Convention, to the detriment of Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal,¹⁰² because:

Article 5 (Right to Humane Treatment) guarantees every person's right to have his physical, mental, and moral integrity respected.¹⁰³ No person shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment, and all persons deprived of their liberty shall be treated with regard for the inherent dignity of the human person.¹⁰⁴

Here, the close family ties between Mr. Portugal and his next of kin, the efforts of the next of kin to search for truth and justice, the ineffectiveness of the measures adopted by the State to ascertain the facts and punish those responsible caused Mr. Portugal's next of kin frustration, anger, insecurity, and feelings of powerlessness.¹⁰⁵ Therefore, the State's failure to provide information and investigate the facts surrounding Mr. Portugal's disappearance affected the moral and mental integrity of Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal.¹⁰⁶

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention and Article 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearance of Persons,¹⁰⁷ because:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention confers upon States the obligation to adopt, in accordance with its constitutional processes and the provisions of the Convention, legislative and other measures necessary to protect the rights guaranteed in Article 1 (Obligation to Respect Rights) of the Convention, while Article 3 (Obligation to Adopt Legislative Measures)

101. *Id.* ¶ 156.

102. *Id.* ¶ 275(6).

103. *Id.* at n.129.

104. *Id.*

105. *Id.* ¶ 174.

106. *Id.* ¶ 175.

107. *Id.* ¶ 275(7).

*of the Inter-American Convention on Forced Disappearance of Persons places an obligation upon the State to adopt, in accordance with its constitutional procedures, legislative measures to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity.*¹⁰⁸

*Here, the State failed to define the offense of forced disappearance in accordance with the Inter-American Convention on Forced Disappearance of Persons and the protection offered by the State's criminal laws on kidnapping, torture, and homicide was insufficient.*¹⁰⁹ *Until the new Penal Code entered into force in 2007, the investigation of forced disappearance was conducted under homicide, which focused on the right to life and was subject to a statute of limitations.*¹¹⁰ *The offense of forced disappearance, in accordance with the Inter-American Convention on Forced Disappearance of Persons, however, is not subject to a statute of limitations.*¹¹¹ *Finally, the definition of forced disappearance in the new 2007 Penal Code did not conform to the minimum standard for the correct definition established by international law.*¹¹²

Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture,¹¹³ because:

*Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention to Prevent and Punish Torture establishes the State's obligation to ensure that all acts of torture are defined as offenses under its criminal law and to make such acts punishable by severe penalties that take into account their serious nature.*¹¹⁴ *Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture indicates that if there is an accusation or well-grounded reason to believe that an act of torture has been committed, the State shall guarantee that its authorities proceed properly and immediately to*

108. *Id.* ¶ 189 n.145.

109. *Id.* ¶ 181.

110. *Id.* ¶ 183.

111. *Id.*

112. *Id.* ¶¶ 189, 196-197, 200, 207, 209.

113. *Id.* ¶ 275(8).

114. *Id.* ¶ 213.

*investigate the case and to initiate, whenever appropriate, the corresponding criminal process.*¹¹⁵

*Here, the State failed to comply with its obligation to define the offense of torture in accordance with the Inter-American Convention to Prevent and Punish Torture.*¹¹⁶ *The Penal Code did not define the offense of torture specifically, but defined it under “Crimes against Personal Liberty.”*¹¹⁷ *In addition, it did not elaborate on the elements of the offense*¹¹⁸ *and merely referred to the conduct of public officials at the time the person had been detained.*¹¹⁹

C. Dissenting and Concurring Opinions

1. Concurring Separate Opinion of Judge Sergio García Ramírez

Judge García Ramírez emphasized that, as defined in the 1994 Convention, the elements of forced disappearance are: (1) deprivation of liberty; (2) regardless of the way it is perpetrated (i.e., unlawfully or arbitrarily); (3) by State agents or third parties whose acts or omissions involve the State’s international responsibility; (4) absence of information following the deprivation of liberty; (5) refusal to acknowledge such deprivation; (6) refusal to provide information on the whereabouts of the person; and (7) resulting impediment to the exercise of the legal remedies and pertinent procedural guarantees.¹²⁰

Drawing from this definition, Judge García Ramírez observed that the juridical nature of deprivation of liberty must be defined from a dual standpoint: first, the conduct of the agents and its adverse effect on the human and legal rights of the victim, and second, the implications of those acts in relation to those rights, such as the identification of the victim and the legal rights that have been violated.¹²¹

Regarding the first inquiry, the Court understood forced disappearance as a prolonged, continuous crime.¹²² Regarding the second in-

115. *Id.*

116. *Id.* ¶ 216.

117. *Id.* ¶ 214.

118. *Id.* ¶ 215.

119. *Id.*

120. *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 186, ¶ 6 (Aug. 12, 2008).

121. *Id.* ¶ 7.

122. *Id.* ¶¶ 8-9.

quiry, the Court understood that the human and legal rights inherently implicated by forced disappearance are the deprivation of liberty and access to justice.¹²³ Forced disappearance thus encompasses multiple offenses.¹²⁴

Forced disappearance ceases when the disappeared person's fate or whereabouts have been established, either by finding the individual alive, or by finding and identifying his or her remains.¹²⁵ The Court's competence *ratione temporis* was based on the time the forced disappearance ceased, that is, when Mr. Portugal's remains were identified, and not on the time, real or probable, that Mr. Portugal's death occurred.¹²⁶

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Investigate, Prosecute, and Punish Those Responsible

The State did not provide Mr. Portugal's next of kin with effective means of access to justice within a reasonable time. The state must put a stop to the persistence of impunity in order to prevent the repetition of human rights violations.¹²⁷

The State must conduct exhaustive investigations to determine the truth about the death of Mr. Portugal.¹²⁸ The State must remove all *de facto* and *de jure* obstacles, and expedite the investigation and the proceedings related to this case.¹²⁹ The State must ensure that Mr. Portugal's next of kin have full access and capacity to act at all stages of the investigations and proceedings, in accordance with domestic laws and the American Convention. Additionally, the results of the proceedings

123. *Id.* ¶¶ 10-11.

124. *Id.* ¶ 11.

125. *Id.* ¶ 13.

126. *Id.* ¶ 14.

127. *Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 186, ¶ 244 (Aug. 12, 2008).

128. *Id.* ¶ 245.

129. *Id.* ¶¶ 245-246.

must be made public.¹³⁰

2. Publish the Judgment

The State must publish Chapters I, III, VI, VII, VIII, IX, and X of the Judgment in the State's official gazette and in a newspaper of wide-spread national circulation.¹³¹

3. Public Acknowledgement of International Responsibility

The State's public acknowledgment must refer to the human rights violations declared in the Judgment.¹³² The public acknowledgement must be conducted in a public ceremony at which authorities representing the State and the surviving victims are present.¹³³ The State must also invite the surviving victims to the event with sufficient notice.¹³⁴

4. Name a Street "*in Memoriam*"

The Court noted that the State agreed to name a street "Heliodoro Portugal" in a location of significance.¹³⁵

5. Provide Medical Care

The State must immediately provide through its specialized medical institutions medical and psychological care free of charge to Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal, taking into account all conditions that they have suffered as a result of Mr. Portugal's disappearance, and must provide any required medications.¹³⁶

6. Reform Legislation

The State must define the offenses of forced disappearance and torture in accordance with the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention to Pre-

130. *Id.* ¶ 247.

131. *Id.* ¶ 248.

132. *Id.* ¶ 249.

133. *Id.*

134. *Id.*

135. *Id.* ¶¶ 250, 253.

136. *Id.* ¶ 256.

vent and Punish Torture.¹³⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court ordered the State to pay \$20,000 in favor of Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal for extrajudicial expenses related to Mr. Portugal's burial and their medical and psychological treatment expenses.¹³⁸

2. Non-Pecuniary Damages

The Court ordered the State to pay \$66,000 in favor of Mr. Portugal for the gravity of his forced disappearance, to be paid in equal parts to Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal.¹³⁹

Additionally, the Court ordered the State to pay \$40,000 each to Ms. Graciela De León and Mr. Franklin Portugal for their distress, intense psychological suffering, anguish, and uncertainty.¹⁴⁰

Finally, the Court ordered the State to pay \$60,000 to Ms. Patria Portugal for her distress, intense psychological suffering, anguish, and uncertainty, and for her efforts in promoting and monitoring the investigation process.¹⁴¹

3. Costs and Expenses

The Court determined the State owed \$30,000 (including future expenses) to Ms. Patria Portugal to distribute, in an amount at her discretion, to CEJIL, which served as representative of the victims before the Inter-American system.¹⁴²

137. *Id.* ¶ 259.

138. *Id.* ¶¶ 233, 239.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* ¶ 267.

4. Total Compensation (including Costs and Expenses ordered):

\$256,000

C. Deadlines

The State must pay the pecuniary damages to Ms. Patria Portugal, non-pecuniary damages to the beneficiaries, and costs and expenses within one year from notification of the Judgment.¹⁴³

The State must publish the pertinent parts of the Judgment and publicly acknowledge international responsibility within six months of notification of the Judgment.¹⁴⁴

The State must provide the medical and psychological treatment as of the day of notice of the Judgment and for as long as necessary.¹⁴⁵

Finally, the State must define the offenses of forced disappearance and torture in accordance with the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention to Prevent and Punish Torture within a reasonable time.¹⁴⁶

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

April 20, 2010: The President of the Court, Judge García-Sayán, assessed the State's compliance with the Court's Judgment.¹⁴⁷ The President recognized that the State made the payments for pecuniary and non-pecuniary damages and costs and expenses to Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal, however the President stated that the Court will assess this obligation in a plenary session to determine full compliance.¹⁴⁸

Regarding the obligation to identify, prosecute, and, if appropriate, punish those responsible for Mr. Portugal's disappearance and death, the President called for detailed information on the status of the investi-

143. *Id.* ¶¶ 233, 239, 267.

144. *Id.* ¶¶ 248-249.

145. *Id.* ¶ 256.

146. *Id.* ¶ 259.

147. *Heliodoro Portugal v. Panama*, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. (Apr. 20, 2010).

148. *Id.* "Considering That" ¶¶ 6-9.

gation, including a copy of the measures taken, and an explanation of the lines of investigation being conducted.¹⁴⁹

While the President recognized that the State published the pertinent parts of the Judgment in the official gazette on February 6, 2009, and in the *Diario Panamá América* newspaper on February 28, 2009, the Court will assess this obligation in a plenary session to determine if the State has fully complied.¹⁵⁰

Regarding the acts of public apology, the State indicated that it hosted a ceremony to acknowledge international responsibility on February 6, 2009.¹⁵¹ The representatives of the victims contended that the ceremony did not satisfy the States' obligation.¹⁵² First, Ms. Patria Portugal received the invitation only two days before the ceremony was to be held.¹⁵³ Because of the short notice, the Portugal family could not participate in the preparation of the ceremony, nor was the family consulted about the details.¹⁵⁴ Second, Ms. Patria Portugal was not allowed to intervene during the Minister of the Interior and Judgment's speech, which suggested that Mr. Portugal had died in an armed conflict.¹⁵⁵ Ms. Patria Portugal felt that the State's conduct showed disdain for her father, her family, and Panamanian society.¹⁵⁶ Third, the speech made by the Minister of the Interior and Justice did not expressly acknowledge the facts that gave rise to the violations or the obligation to see that justice is done.¹⁵⁷ The Commission also indicated that some aspects of the ceremony were not conducive to achieving the purpose of "moral reparation."¹⁵⁸ The President requested more information from both parties concerning the acts of public apology.¹⁵⁹

Regarding the State's obligation to provide medical and psychological care to the Portugal family, the State indicated it had instructed the Santo Tomás Hospital to provide treatment immediately and free of charge to the family.¹⁶⁰ The representatives contended that the State had not satisfied its obligation in several ways.¹⁶¹ First, as Ms. Graciela De

149. *Id.* "Considering That" ¶ 13.

150. *Id.* "Considering That" ¶¶ 14-17.

151. *Id.* "Considering That" ¶ 18.

152. *Id.* "Considering That" ¶ 19.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* "Considering That" ¶ 20.

159. *Id.* "Considering That" ¶ 21.

160. *Id.* "Considering That" ¶ 22.

161. *Id.* "Considering That" ¶ 23.

León lives in the city of Penonomé, she cannot attend the Santo Tomás Hospital, which is located in Panama City.¹⁶² Second, the State indicated to the family that it could not provide specialized psychological care because it lacked an outpatient system or trained personnel specializing in victims of grave human rights violations, though the State had sought support from the Pan-American Health Organization.¹⁶³ Third, initial diagnoses had never been made to determine the types of disorders suffered and treatment required.¹⁶⁴ The Commission also indicated that the State had not fully complied with the obligation to provide medical and psychological care.¹⁶⁵ The President requested more information on the medical and psychological care being provided to the Portugal family.¹⁶⁶

Lastly, regarding the State's obligation to define the offenses of forced disappearance and torture, the State indicated that a bill amending and adding articles to the Penal Code had been presented to the National Assembly.¹⁶⁷ The President requested more information on the status of the bill and as well as any amendments made to the proposed bill in order to adapt it to the requirements prescribed by the Court in its judgment.¹⁶⁸

The President of the Court ordered a private hearing between the representatives, the State, and the Commission on May 26, 2010.¹⁶⁹

May 24, 2010: The State installed a plaque bearing the name of Mr. Portugal on a street named after him.¹⁷⁰ The street chosen to bear Mr. Portugal's name is in the same area where he carried out his political activities.¹⁷¹ The Vice-President of Panama, Juan Carlos Varela, gave a speech in which he recognized that justice had not yet been done in Mr. Portugal's case and in "many other cases."¹⁷² The Vice-President apologized for the violation of Mr. Portugal's fundamental rights by the State.¹⁷³

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* "Considering That" ¶ 24.

166. *Id.* "Considering That" ¶ 25.

167. *Id.* "Considering That" ¶ 26.

168. *Id.* "Considering That" ¶¶ 26-29.

169. *Id.* "Decides" ¶ 1.

170. *Heliodoro Portugal v. Panama*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering That" ¶ 15 (May 28, 2010).

171. *Id.*

172. *Id.*

173. *Id.*

May 27, 2010: The President of Panama, Ricardo Martinelli, apologized and recognized responsibility for the violations of Mr. Portugal's rights at an event attended by the First Lady of the Republic, the State Ministries, the President of the Supreme Court of Justice, and the Attorney General.¹⁷⁴ Mr. Portugal's family also participated in the event.¹⁷⁵

May 28, 2010: The Court assessed the State's compliance with the obligations set forth in the Judgment.¹⁷⁶

The Court acknowledged that the State fully complied with its obligation to pay pecuniary and non-pecuniary damages and costs and expenses to Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal.¹⁷⁷ Likewise, the Court considered that the State had satisfied its obligation to publish the pertinent parts of the Judgment in the official gazette and in a national newspaper of widespread circulation.¹⁷⁸

The Court noted the efforts of the State to provide redress to Mr. Portugal's family, to preserve the historical memory of human rights violations, and to ensure that such violations are not repeated.¹⁷⁹ The unveiling the plaque on a street named after Mr. Portugal and the public apology offered at the May 27, 2010 event served to satisfy the State's obligation to carry out a public act acknowledging international responsibility.¹⁸⁰

The Court declared it would continue to monitor compliance with some aspects pending compliance. First, the Court required additional information concerning the State's obligation to investigate the facts that gave rise to the violations committed against Mr. Portugal, and identify, prosecute, and, if appropriate, punish those responsible.¹⁸¹

Second, regarding the State's obligation to provide specialized health care to the Portugal family, the Court noted that social services provided to individuals must not be confused with reparations owed to the victims of human rights violations.¹⁸² Therefore, the Portugal family should be provided with "preferential treatment" when seeking care at

174. *Id.* "Considering That" ¶¶ 16-17. Transcript available at: http://www.presidencia.gob.pa/ver_nodo.php?cod=1395 (Available only in Spanish).

175. *Id.*

176. *Heliodoro Portugal v. Panama, Monitoring Compliance with Judgment*, Order of the Court, Inter-Am. Ct. H.R. (May 28, 2010).

177. *Id.* "Considering That" ¶¶ 6-9.

178. *Id.* "Considering That" ¶¶ 10-13.

179. *Id.* "Considering That" ¶ 17.

180. *Id.*

181. *Id.* "Considering That" ¶ 23.

182. *Id.* "Considering That" ¶ 28.

public hospitals.¹⁸³ The Court required additional information concerning the medical and psychological care being provided to Ms. Graciela De León, Ms. Patria Portugal, and Mr. Franklin Portugal, as well as information about the feasibility of receiving support from the Pan-American Health Organization.¹⁸⁴

Lastly, the Court requires additional information from the State concerning the processing of the new bill aimed at defining the offenses of forced disappearance and torture.¹⁸⁵ The Court requested the observations of the Commission and the representatives of the content of the bill and its conformity with the Inter-American Convention on Forced Disappearance and the Inter-American Convention to Prevent and Punish Torture.¹⁸⁶

June 19, 2012: The Court assessed the State's compliance with the obligations set forth in the Judgment.¹⁸⁷

The Court determined that the State fully complied with its obligation to define the offense of torture in accordance with the Inter-American Convention to Prevent and Punish Torture by modifying and adding articles to the Criminal Code of Panama.¹⁸⁸ However, the Court determined that the State only partially complied with its obligation to define the offense of forced disappearance of persons because while the State transcribed the definition from the Inter-American Convention on the Forced Disappearance of Persons, it failed to mention the continuous or permanent nature of the offense and that the statute of limitations does not apply to criminal proceedings for this offense.¹⁸⁹

The Court decided to keep open the procedure to monitor compliance regarding the following obligations not fully complied with: (1) investigate, prosecute, and punish those responsible; (2) provide medical and psychological care to the required victims immediately and free of charge; and (3) define the offense of forced disappearance of persons in accordance with this order.¹⁹⁰

183. *Id.*

184. *Id.* "Considering That" ¶ 31.

185. *Id.* "Considering That" ¶¶ 32-37.

186. *Id.* "Considering That" ¶ 37.

187. *Heliodoro Portugal v. Panama*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (June 19, 2012).

188. *Id.* "Considering That" ¶¶ 25-27.

189. *Id.* "Considering That" ¶¶ 22-24.

190. *Id.* "Declares" ¶ 3.

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Decisions on Preliminary Objections, Merits, Reparations and Costs

[Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 186 \(Aug. 12, 2008\).](#)

[Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 186 \(Aug. 12, 2008\).](#)

2. Provisional Measures

[None]

3. Compliance Monitoring

[Heliodoro Portugal v. Panama, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Apr. 20, 2010\).](#)

[Heliodoro Portugal v. Panama, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 28, 2010\).](#)

[Heliodoro Portugal v. Panama, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 19, 2012\).](#)

4. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Heliodoro Portugal v. Panama, Admissibility Report, Report No. 72/02, Inter-Am. Comm'n H.R., Case No. 12.408 \(Oct. 24, 2002\).](#)

3. Precautionary Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

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