

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF NOVEMBER 11, 1997

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION OF HUMAN RIGHTS
IN THE MATTER OF THE REPUBLIC OF COLOMBIA**

ÁLVAREZ ET AL. CASE

HAVING SEEN:

1. The brief of July 7, 1997, and its attachments, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures on behalf of 17 persons connected with the Association of Relatives of Detained and Disappeared Persons in Colombia (hereinafter "the Association" or "ASFADDES") concerning case No. 11.764 before the Commission against the State of Colombia (hereinafter "the State" or "Colombia").

2. The events set out in the Commission's request, in which it describes the activities of the Association and the acts of which its members have generally been victim, summarized as follows:

a) the Association is a nongovernmental organization that brings together and supports the relatives of victims of forced disappearance in Colombia, fights against the practice of forced disappearance, and attempts to obtain reforms in Colombia's national policy in the matter. In recent months, both the National Board of Directors of ASFADDES and its Medellín section Board have expressed their disagreement with a number of judicial decisions that allow military officials, members of paramilitary and political groups have been exonerated and freed in cases of forced disappearance. They have also declared that the right to the truth has not been respected, inasmuch as not all the whereabouts of the disappeared persons have been established nor have all those responsible been punished;

b) in May 1992, ASFADDES was described by the then Commander of the Fifth Brigade as "*guerrilla sympathizers*." From then on its members have been systematically harassed and threatened;

c) on May 15, 1997, the Association was forced to close its Ocaña section offices on account of the serious harassment to which its officials were subjected;

d) on June 24, 1997, an explosive device with approximately five kilos of dynamite destroyed the ASFADDES' Medellín section offices and files;

e) at the time at which the Commission made its request, a ruling was about to be handed down on an administrative request for nullification in a highly pertinent sensitive case involving former General Álvaro Velandia-Hurtado, a senior army officer, in connection with the disappearance of Nidia Erika Bautista, sister of Yanette Bautista and José Publio Bautista and mother of Erik Arellano-Bautista, on behalf of whom the adoption of provisional measures was sought. At that time the Commission considered that this judicial pronouncement would have sweeping repercussions on the members of the Association.

3. The deeds which the Commission alleges to have been perpetrated against the persons on behalf of whom the adoption of provisional measures was sought; they

include: threatening telephone calls, surveillance by DAS officials or State security organs, inquiries into their affairs, and harassment by alleged paramilitary groups.

4. The Commission's arguments on which its request for provisional measures is based, that Colombia has taken no effective action to protect those persons and that "*despite the existence of precautionary measures requested by the Commission on behalf of various members of the organization ... the harassment has continued and increased, culminating in the attack on the Medellín section office on June 24, 1997.*"

5. The communication from the Commission of July 16, 1997, through which it informed the Court of subsequent stalking of and threats to of Yanette Bautista, Erik Antonio Arellano-Bautista, and José Publio Bautista. The Commission also claimed that the administrative petition for nullification in the case in which former General Álvaro Velandia Hurtado was sentenced for the disappearance of Nidia Erika Bautista (*supra*, preambular paragraph 2(e)) was denied on June 20, 1997, by the Administrative Contentious Tribunal of El Valle.

6. The Order of the President of the Court (hereinafter "the President") of July 22, 1997, through which he decided:

1. To request the Republic of Colombia, in strict compliance with the obligation to respect and guarantee human rights which it undertook in accordance with Article 1(1) of the American Convention on Human Rights, to adopt forthwith such measures as are necessary to protect the life and integrity of José Daniel Álvarez, Nidia Linores Ascanio, Gladys López, Yanette Bautista, María Helena Saldarriaga, Piedad Martín, María Eugenia López, Adriana Diosa, Astrid Manrique, Faride Ascanio, Carmen Barrera, Evidalia Chacón, José Publio Bautista, Nelly María Ascanio, Ayda Mile Ascanio, and Miriam Rosas Ascanio in order to prevent irreparable damage to them.

2. To request that the Republic of Colombia, as soon as Mr. Erik Antonio Arellano-Bautista returns to its territory, adopt such measures as are necessary to protect his life and physical integrity in order to prevent irreparable damage to him.

3. To request that the Republic of Colombia investigate the facts denounced and punish those responsible for them, particularly with regard to the attack of June 24, 1997, on the Association's offices in the city of Medellín.

4. To request that the Republic of Colombia adopt forthwith such measures as are necessary to ensure that all the offices of the Association of Relatives of Detainees-Disappeared Persons of Colombia may discharge its functions without danger to the lives or physical integrity of the persons working there, especially the Association's offices in the cities of Medellín and Ocaña.

5. To request that the Republic of Colombia submit a first report on the measures adopted within 15 days of notification of this Order and that the Inter-American Commission on Human Rights submit its comments on that report within a period of one month from receipt of that document.

6. To request that the Republic of Colombia, from the date of presentation of its first report, continue to submit every two months its reports on the provisional measures taken and that the Inter-American Commission on Human Rights submit its comments on those reports within 45 days of receiving them.

7. To present this Order for the consideration of the Court at its next session for the pertinent effects and so that it can convene the parties, if it so deems, to a public hearing at the seat of the Court, so that the Tribunal may hear their views on the facts and circumstances that gave rise to the request for provisional measures and to this Order.

7. The first report of Colombia, submitted on August 7, 1997, in which it expressed its view on the Urgent Measures adopted by the President in the instant case and reported in detail on the measures which, in its opinion, it had duly taken in response to the Inter-American Commission's requests of September 20, 1994, and February 25, 1997, for

precautionary measures to be adopted. The State described some measures implemented to comply with the decisions of the President in his Order of July 22, 1997, particularly a meeting with ASFADDES on July 30, 1997, to discuss implementation of the President's decisions. The State said that the members of ASFADDES had read out a series of proposals at that meeting, and that it disagreed with some of them.

8. The brief from the Inter-American Commission of August 12, 1997, in which it requested that the Urgent Measures adopted by the President be expanded to include Mr. Javier Álvarez, a member of ASFADDES, General Coordinator of the "*Casa de Niños*" Children's Center and brother of Mr. José Daniel Álvarez Ruiz, General Coordinator of the Association. According to the Commission, Mr. Javier Álvarez had received a number of threats which revealed the existence of "*a situation of extreme gravity and urgency, requiring the adoption of provisional measures.*" Specifically, in June 1997, he was warned to be careful since he greatly resembled the President [sic] of ASFADDES and on August 2, 1997, three men on scooters asked his neighbors where he was and remained watching his home. Those persons left a threatening letter at his house addressed to "*Mr. Javier Álvarez (President [sic] ASFADDES)*" in which, in brief, they informed him that he was under surveillance and that he was given 24 hours to leave, with "*[his] group*", the area where he lived. The Commission attached a copy of the letter to its request.

9. The Order of the President of the Court of August 14, 1997, in which he decided:

1. To request that the State of Colombia expand the urgent measures adopted in this case for the purpose of guaranteeing the right to life and physical integrity of Mr. Javier Álvarez.
2. To request that the State of Colombia investigate the facts denounced by the Inter-American Commission on Human Rights and punish those responsible.
3. To submit this order for the consideration of the Court during its next session for the pertinent effects.
4. To submit the first report of the State and the Commission's briefs from the Commission of July 7, 1997, and August 12, 1997, for the consideration of the Court at its next session for the pertinent effects.
5. To request the State of Colombia to include the provisional measures taken pursuant to this Order in the reports it will submit every two months in accordance with the order of July 22, 1997, to bring them to the attention of the Court.

10. The brief of September 7, 1997, and its attachments from the Inter-American Commission, through which it submitted to the Court its comments on the first report of the State. In that brief, the Commission stated that several members of the Association had been subjected to further acts of harassment, particularly at its offices in the municipalities of Ocaña and Riosucio, which have been closed as a result. The Commission further indicated its disagreement with the State regarding the protection offered to the members of ASFADDES during the processing of the precautionary measures before the Commission, and the situation of risk in which those persons currently found themselves. The Commission explained in detail its position on the matter and the reasons on which that position is based.

11. The Order of the President of the Court of September 25, 1997, through which he convened the Commission and the State to a public hearing on November 8, 1997, to present their arguments on the provisional measures requested in the instant Case.

12. The second report from the State of October 14, 1997, in which it reported that it "*ha[d] been working on ... developing the individual, preventive and office protection*

measures within the framework of the Follow-up Committee set up for the purpose and in compliance with the measures stipulated by the President of the Honorable Court." It announced that it would refer to the Commission's comments on its first report at the public hearing convened by the Court.

13. The communication of November 3, 1997, from the Commission, through which it submitted the names of the persons who would represent it at the public hearing and presented the testimony of Mr. José Daniel Álvarez and Ms. Nidia Linores Ascanio.

14. The public hearing held on November 8, 1997, at which there appeared:

for the Inter-American Commission on Human Rights:

Robert Goldman, delegate;
Denise Gilman, attorney;
Gustavo Gallón, assistant;
Luz Marina Munzón, assistant;
Viviana Krsticevic, assistant; and
José Daniel Álvarez, witness;

for the State of Colombia:

Marcela Briceño-Donn; and
Ambassador Jorge Michelsen-Rueda.

CONSIDERING:

1. That Colombia is a State Party to the American Convention, Article 1(1) of which stipulates the duty of States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, and that the State recognized the jurisdiction of this Court on June 21, 1985, in accordance with Article 62 of the Convention.

2. That Article 63(2) of the Convention provides that:

[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That the Court has examined the events and circumstances that formed the basis of the Orders of the President of June 22 and August 14, 1997, which it upholds, deeming them to be in keeping with the law and the merit of the proceedings.

4. That Colombia has taken a series of measures to protect José Daniel Álvarez, Nidia Linores Ascanio, Gladys López, Yanette Bautista, María Helena Saldarriaga, Piedad Martín, María Eugenia López, Adriana Diosa, Astrid Manrique, Faride Ascanio, Carmen Barrera, Evidalia Chacón, José Publio Bautista, Nelly María Ascanio, Ayda Mile Ascanio, Miriam Rosas Ascanio, Erik Antonio Arellano-Bautista, and Javier Álvarez.

5. That examination of the arguments adduced by the Commission and by Colombia shows the State's good faith and efforts to satisfy the petitioners' needs in compliance with the Urgent Measures ordered by the President, which the Court recognizes. The above

notwithstanding, the situation of risk in which these persons find themselves still persists, a fact acknowledged by the State at the public hearing.

6. This Court considers that the situation of the members of ASFADDES justifies the adoption of Provisional Measures. Accordingly, Colombia has the obligation to maintain the measures ordered by the President to guarantee the life and physical integrity of those persons whose rights might be jeopardized, and to investigate the events denounced and, if applicable, punish those responsible. That obligation to investigate, like the obligation to prevent and punish, must be assumed by the State as a juridical duty and not as a mere formality.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred by Article 63(2) of the American Convention on Human Rights and Articles 25(1) and 25(2) of its Rules of Procedure,

DECIDES:

1. To ratify the orders of the President of the Inter-American Court of July 22 and August 14, 1997.

2. To require the State of Colombia to maintain the necessary measures for a period of six months from the date of this Order so as to protect the lives and physical integrity of José Daniel Álvarez, Nidia Linores Ascanio, Gladys López, Yanette Bautista, María Helena Saldarriaga, Piedad Martín, María Eugenia López, Adriana Diosa, Astrid Manrique, Faride Ascanio, Carmen Barrera, Evidalia Chacón, José Publio Bautista, Nelly María Ascanio, Ayda Mile Ascanio, Miriam Rosas Ascanio, Erik Antonio Arellano-Bautista, and Javier Álvarez and to avoid irreparable damage to them. Once the term has expired, the Court shall assess the situation of the protected persons.

3. To require that the State of Colombia adopt such measures as may be necessary to protect the life and physical integrity of Mr. Erik Antonio Arellano-Bautista as soon as he returns to its territory.

4. To require that the State of Colombia investigate the events denounced and punish those responsible for them, especially with regard to the attack of June 24, 1997, on the offices of the Association of Relatives of Detained and Disappeared Persons of Colombia (ASFADDES) in the city of Medellín.

5. To require that the State of Colombia maintain the measures necessary to ensure that all the offices of the Association of Relatives of Detained and Disappeared Person of Colombia (ASFADDES) can discharge its duties without danger to the lives and physical integrity of the persons working there, especially at the Association's offices in the cities of Medellín and Ocaña.

6. To require that the State of Colombia continue to report every two months on the measures it has taken to comply with this order.

7. To require that the Inter-American Commission on Human Rights submit its comments on that information to the Court at least six week from the date of its receipt.

Hernán Salgado-Pesantes
President

Antônio A. Cançado Trindade

Héctor Fix-Zamudio

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary