

**Order of the
Inter-American Court of Human Rights
of February 6, 2008
Provisional Measures
with regard to the Republic of Colombia
Case of Caballero-Delgado and Santana**

HAVING SEEN:

1. The Judgments on the merits, and reparations and costs rendered in the case of Caballero-Delgado and Santana by the Inter-American Court of Human Rights (hereinafter, "the Court", "the Inter-American Court" or "the Tribunal") on December 8, 1995, and January 29, 1997.

2. The Orders of the Inter-American Court on provisional measures of December 7, 1994; January 31, 1997; April 16, 1997; September 19, 1997; June 3, 1999 and July 4, 2006. Through the latter order, the Court decided:

[...]

2. To call upon the State to maintain and adopt any measures necessary to protect the life and personal integrity of María Nodelia Parra and Gonzalo Arias-Alturo.

[...]

3. Reports No. 43 to 45 of the State of Colombia (hereinafter, "the State" or "Colombia") filed from August 17, 2006, to September 4, 2007, and the additional reports of September 15, 2006, and October 9, 2007, whereby the State disclosed the protection measures adopted in relation to the beneficiaries and reported on the investigation of the events that resulted in the adoption of the provisional measures.

4. The briefs filed by the representatives of the beneficiaries of the provisional measures (hereinafter, "the representatives") on September 26 and October 24, 2006; July 3 and November 13, 2007, whereby they submitted their comments to the reports of the State.

5. The briefs of the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") of October 19, 2006; July 5, 2007; August 8, 2007 and January 8, 2008, whereby they submitted their comments on the information provided by the State.

6. The Order of the President of the Inter-American Court of December 10, 2007, whereby it called the State, the Inter-American Commission and the representatives of the beneficiaries to a hearing in order to gather information on: i) the implementation of the provisional measures ordered in the instant case, and ii) the ongoing situation of extreme gravity and urgency requiring to avoid irreparable harm that resulted in the adoption of such measures in favor of the beneficiaries, with the aim of evaluating the need to keep them in full force.

7. The public hearing on these provisional measures held on February 4, 2008, at the seat of the Court.¹

8. The request to lift the provisional measures ordered in the instant case by the State in such public hearing. In that opportunity, the State made the following representations, among others:

a) regarding the validity of the provisional measures, it reminded that said measures were adopted in 1994, given the participation of the beneficiaries as witnesses in the case of Caballero-Delgado and Santana, and that through various orders of the Court, the measures were lifted in relation to certain beneficiaries. Since then, the State has adopted the provisional measures ordered and has performed an ongoing follow-up on their implementation. That notwithstanding, the State alleged that the measures should be lifted since: i) they have been in force for more than 13 years, and in fact provisional measures should be exceptional in nature; ii) there is no evidence of new threats; iii) domestic law provides for effective mechanisms to protect a person who acts as trade union leader, as in the case of María Nodelia Parra and a person detained in a penitentiary, as in the case of Gonzalo Arias-Alturo.

Furthermore, as to the specific situation of María Nodelia Parra, the State reported that in 2007, it carried out a current risk assessment, which showed that the level of risk was "normal". In the case of Gonzalo Arias-Alturo, the State indicated that said individual made contradictory statements, since at a certain instance it requested that the measures ordered be lifted and recently it expressed its will to maintain those measures. The State held that similar contradictory statements were detected in relation to the other beneficiary, as regards her allegations on the occurrence of new threats.

Lastly, the State added that the reasons for requesting in 1997 the reinforcement of the provisional measures in favor of these two beneficiaries cannot be upheld today as grounds for continuity thereof. Today, there would be more means to guarantee the exercise of rights and freedoms, more capacity and commitment by the State to protect individuals. The State indicated that there is no information available to prove that the circumstances of risk became more severe and that the criminal investigations related to these

¹ The following persons were present at this hearing: a) for the Inter-American Commission on Human Rights: Manuela Cuvi-Rodríguez and Karin Mantel, advisors; b) for the Republic of Colombia: Carlos Franco Echevarría, Director of the Presidential Human Rights Program and International Humanitarian Law (*Programa Presidencial para los Derechos Humanos Derecho Internacional Humanitario*); Clara Inés Vargas-Silva, Director of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs; Francisco Javier Echeverri-Lara, Director of the Office of International Affairs, General Prosecutor's Office; Juan Carlos Gómez-Ramírez, Director of Human Rights, National Ministry of Defense; Eduth Claudia Hernández-Aguilar, Coordinator of Defense before international organizations for the National Ministry of Defense; Liliana Romero, Advisor for the Office of International Affairs, General Prosecutor's Office; and Janneth Mabel Lozano-Olave, Coordinator of Protection and Information for International Organizations, Board of International Humanitarian Law and Human Rights of the Ministry of Foreign Affairs; and c) for the representatives of the beneficiaries of provisional measures: Gustavo Gallón-Giraldo and Luz Marina Monzón, both members of the Colombian Commission of Legal Scholars (*Comisión Colombiana de Juristas*).

measures may continue, without involving any risk to the beneficiaries. The State mentioned that it was open and willing to discuss the criteria for performing a risk assessment;

b) regarding the investigation of threats and telephone tapping in relation to María Nodelia Parra, the State reminded that the investigation of the alleged threats began in October 1995. It reported that the preliminary investigation stage is in progress since the individuals who committed the acts could not be identified and that to commence criminal pre-trial proceedings the law requires that the accused be identified; that did not happen in this case. Despite the proceedings carried out, it was not possible to establish actual occurrence of the alleged threats and, therefore, identify the corresponding individuals. In order to perform all possible proceedings, the prosecutor who had previously taken part in the case ordered special measures such as gathering periodic information from the telephone company regarding the beneficiary and periodic interviews to María Nodelia Parra to establish the occurrence of new threats or telephone tapping. For many years now, the Technical Investigative Corps examined the telephone lines and reported no news on the matter; and during the interviews performed, Nodelia Parra indicated that she did not suffer new threats; and

a) regarding the implementation of the provisional measures, the State indicated that the safety protection scheme for María Nodelia Parra consists in a van and two escorts with registered guns, in addition to the protection provided by the Protection Office of the Ministry of Interior and Justice.

9. The comments of the representatives to the report of the State made at the public hearing, whereby they represented, among other things:

a) regarding the validity of the measures, the reasons why the Court decided to maintain the measures on July 4, 2006, have not changed to date. The representatives reminded that in 1997, the State requested to analyze the lifting of the provisional measures, based on the representatives' request, and to maintain those measures while "the risk circumstances continue, taking into account that domestic proceedings have already been initiated". The representatives claimed that the State has large expectations regarding the efforts made to progress on criminal investigations regarding the forced disappearance of the victims of the instant case and that the source of the risk for the beneficiaries is associated with such criminal investigation. They stated that it would be illogical to lift the measures adopted in the instant case since that would result in discouraging any furthering of investigations. As to the situation of Arias-Alturo, the representatives stated that the danger is that he might not contribute to the investigation since he claimed to fear for his safety and is willing to offer information he did not provide before due to that fear. The representatives stated that whenever their reliability is at stake, protection should be maintained. In the case of María Nodelia Parra, it was indicated that this person has never ceased in its efforts to promote the investigation of the forced disappearance of Isidro Caballero-Delgado; therefore, its claim before the courts must lead to a risk assessment that covers more than a direct threat. Even if the beneficiary stated that she received no direct threat, furthering the

investigation proceedings she initiated poses certain inherent risks. The representatives added that they ignored if a risk assessment had been performed in relation to María Nodelia Parra and they claimed that said information was required to issue an opinion on such assessment and its outcome.

Furthermore, they rejected the arguments of the State upon representing: i) as regards domestic protection measures: that allegations are contradictory; either there is no situation of risk and hence no protection is required; or the risk does exist and the provisional measures should be maintained; ii) as regards the time the measures remained in force: that this results from lack of success in the investigations and the impunity situation in which the case is enmeshed; iii) as regards new events: that "of course, no new events occurred", given that the risk is related to the criminal investigation, that impunity continues regarding this case and that the risk would re-emerge if investigations are resumed; iv) lastly, they disagreed as to the presence of an increased security environment in the country, which in any case should not be discussed in connection with a provisional measure since in their opinion the general situation is more serious. Lastly, the representatives pointed out that the State's allegation that the situation of risk may result from trade union activities carried out by María Nodelia Parra is a "new and unexpected" allegation and the representatives never claimed that those activities were the grounds to adopt or maintain the measures. Based on the reasons stated above, the representatives requested that the provisional measures be maintained;

b) regarding the protection scheme, it was reported that since 2003, various requests have been made to change the vehicle assigned to María Nodelia Parra due to the problems said vehicle had and the representatives said that the beneficiary does not enjoy any protection scheme other than as set forth in these provisional measures. They explained that the provisional measures are implemented through the domestic protection mechanism, but that the capacity as beneficiaries of provisional measures facilitates the implementation of the protection. They explained that, in the particular case of María Nodelia Parra, a risk assessment that establishes a "normal" level of risk -pursuant to the domestic system- would not justify implementing a protection system such as the one in force; and

c) regarding the investigation of the threats alleged by María Nodelia Parra, the representatives claimed that such investigation was unsuccessful and that since 1995, proceedings are at preliminary stage. They reminded that three situations were reported to the authorities: i) harassment by a police officer against María Nodelia Parra when her father died, which led to the commencement of proceedings No. 589; it was stated that no investigation measures were adopted in those proceedings, including photographic identification of the person involved while serving in the police; ii) follow-up of motorcycling police officers, as reported by the escort of the *Departamento Administrativo de Seguridad* (Administrative Security Department); however, the escort's description was not used to identify the police officers; and iii) tapping of her telephone line, which was examined various months after the events.

10. In the public hearing, the Inter-American Commission stated that it was of the opinion that certain risk factors still persist; therefore, it requested that provisional measures be maintained.

CONSIDERING:

1. That Colombia is a State Party to the American Convention on Human Rights (hereinafter, "the Convention") since July 31, 1973, and that, under Article 62 thereof, it accepted the contentious jurisdiction of the Court on June 21, 1985.

2. That Article 63(2) of the American 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 Article 25(1) of the Rules of Procedure of the Court provides that "[a]t any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention."

4. That Article 1(1) of the Convention embodies the obligation 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.

5. That under International Human Rights Law, provisional measures are not only precautionary –as they preserve a legal situation–, but mainly protective in that they safeguard human rights, insofar as they seek to prevent irreparable damage to persons. The measures apply provided the key requirements of extreme gravity and urgency, and irreparable harm to individuals are met. Thus, provisional measures transform into a true jurisdictional guarantee of preventive nature.²

6. That it is necessary that provisional measures remain in full force and effect until the Court orders lifting such measures and notifies the State its decision to do so.³

² Cr. *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of March 15, 2005, Considering paragraph No. 4; *Case of the 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of March 15, 2005, Considering paragraph No. 6; and *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison) with regard to Venezuela*. Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 02, 2007, Considering paragraph No. 4.

³ Cf. *Matter of Liliana Ortega et al.* Provisional measures regarding Venezuela. Resolution of the Inter-American Court of Human Rights of March 01, 2005, Considering paragraph No. 10; *Matter of Yare I*

7. That provisional measures are exceptional in nature, they are ordered based on protection needs and, once ordered, they must be maintained provided the Court considers that the requirements of extreme gravity and urgency, and irreparable damage to the rights of the individuals protected by these measures continue.⁴

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8. That the Court appreciates the efforts made by the State in order to implement the provisional measures ordered in the instant case and to fulfill the obligation to submit periodic reports.

9. That, as reported by the State and the representatives (*supra* Having Seen paragraphs No. 8 and 9), the Court finds that the validity of provisional measures in favor of two beneficiaries is mainly related to the criminal investigation of the forced disappearance of Isidro Caballero-Delgado and María del Carmen Santana-Ortiz. In this regard, the progress expected for criminal investigation proceedings would increase the level of risk as regards María Nodelia Parra, who has initiated investigations in the domestic jurisdiction as civil claimant. Furthermore, the reason to maintain the provisional measures in favor of Gonzalo Arias-Alturo is related to his participation as witness in the investigation of the forced disappearance of the victims in the instant case.

10. That the Court notes that the aforementioned beneficiary has been subject to the protection of the provisional measures for more than 10 years and this did not result in specific progress in the investigation of the events. Indeed, at the public hearing both the State and the representatives referred to the lack of credibility of the statements made by such person and referred to the contradictory statements detected therein.

11. That notwithstanding the considerations above, the Court finds that the representatives and the Commission requested the Court to order that these provisional measures be maintained in favor of both beneficiaries (*supra* Having Seen paragraphs No. 9 and 10).

12. That the Court considers that it is necessary for the State to maintain these provisional measures to protect the life and integrity of María Nodelia Parra and Gonzalo Arias-Alturo, since the information considered by the Court allows to

and Yare II Region Penitentiary Center (Yare Prison). Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 30, 2007, Considering paragraph No. 7; and *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 03, 2007, Considering paragraph No. 21.

⁴ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Resolution of the Inter-American Court of Human Rights of March 14, 2001, Considering paragraph No. 3; *Matter of Yare I and Yare II Region Penitentiary Center (Yare Prison)*. Provisional Measures regarding Venezuela, *supra* note 3, Considering paragraph No. 4; and *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela, *supra* note 3, Considering paragraph No. 7.

determine that such measures are necessary to avoid irreparable damage to their right to life and to personal integrity.

13. That the Court appreciates the information provided by the State in the sense that certain protection measures set forth in the domestic legislation could benefit both petitioners (*supra* Having Seen paragraph No. 8(a)). The Court considers the State should address in its next report the domestic protection mechanisms that would apply to both beneficiaries. Particularly, the Court is keen on knowing the specific domestic protection measures that could be adopted regarding both beneficiaries; such measures would guarantee a protection level similar to that enjoyed by the beneficiaries of provisional measures contemplated herein.

14. That the State has the duty to continue investigating the events that gave rise to and justified maintaining these provisional measures and, as applicable, identifying those responsible for the events and impose the corresponding penalties, and investigate any acts of harassment and other events allegedly occurred under these provisional measures.

15. That pursuant to Article 63(2) of the Convention, the State has a duty to adopt such provisional measures as this Court may order, insofar as the basic principle of the International Responsibility of States, supported by international case law, provides that States must fulfill their treaty obligations in good faith (*pacta sunt servanda*).

NOW THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority conferred upon it by Article 63(2) of the American Convention on Human Rights and exercising the powers conferred upon it by Article 25 of its Rules of Procedure,

DECIDES:

1. To call upon the State to maintain and adopt any measures necessary to protect the life and personal integrity of María Nodelia Parra and Gonzalo Arias-Alturo.

2. To remind the State its request to investigate the events that gave rise to and justified maintaining the provisional measures and, as applicable, to identify those responsible for the events and to impose the corresponding penalties.

3. To remind the State its request to allow the participation of the beneficiaries in planning and implementing the protection measures, and, in general, to keep them informed on the progress of the measures issued by the Inter-American Court of Human Rights.

4. To request the State to continue reporting to the Inter-American Court of Human Rights, every two months, on compliance with the provisional measures adopted, and to order the representatives of the Community to submit their comments on the State's respective bimonthly reports no later than four weeks following receipt, and the Inter-American Commission on Human Rights to submit its comments on said reports no later than six weeks following receipt thereof.

5. To request the Secretariat of the Court to serve notice of this Order upon the State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries of these measures and the State.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary