

**ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
FEBRUARY 3, 2010**

**PROVISIONAL MEASURES REGARDING COLOMBIA
CASE OF CABALLERO DELGADO AND SANTANA**

HAVING SEEN:

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

2. The Orders of the Inter-American Court of December 7, 1994; January 31, April 16, and September 19, 1997; June 3, 1999; July 4, 2006, and February 6, 2008, all issued in relation with the present provisional measures. In its most recent Order, the Court decided, *inter alia*:

1. To require the State to maintain and adopt the necessary measures to protect the life and personal integrity of [...] María Nodelia Parra and Gonzalo Arias Alturo.

2. To reiterate to the State to investigate the facts that originated and motivated the maintenance of the provisional measures, and if it is the case, to identify those responsible and impose the corresponding sanctions.

3. To reiterate to the State that it must give participation to the beneficiaries in the planning and implementation of the measures of protection and that, in general, to keep the Court informed about the advance of the measures dictated by the Inter-American Court of Human Rights.

3. The briefs of August 1 and September 19, 2008, and May 28, July 7 and 16, 2009 and their attachments, by which the Republic of Colombia (hereinafter "the State" or "Colombia") presented information about: a) the actions to implement the present provisional measures and the mechanisms of protection adopted in favor of the beneficiaries; b) the results of the re-evaluation study of the risk level and degree of threat facing Ms. María Nodelia Parra, and c) the concrete measures of internal protection that could be adopted regarding both beneficiaries.

4. The briefs of March 2, June 27, August 25, September 24, and October 1, 2009 and their attachments, by which the representatives of the beneficiaries (hereinafter "the representatives") presented their observations to the reports of the State and additional information regarding the case, and discussed: a) the request for additional information formulated by the Court on June 17, 2009, regarding the situation of extreme gravity and urgency of the beneficiaries; b) the alleged lack of investigation of the facts that motivated the present measures, and c) the alleged

refusal of Ms. María Nodelia Parra to submit herself to a new study of the level of risk and degree of the threat.

5. The briefs of January 26, July 23, and September 11, 2009, through which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented their observations to the reports of the State and to the briefs of the representatives.

6. The notes of May 8, July 4, August 11, and November 20, 2008, and February 5, June 17, July 8, August 28, and September 8, 2009, among others, by which the Secretary of the Tribunal, following the instructions of the then-President of the Court: a) requested additional information from the State and the representatives regarding the present provisional measures; b) restated the expiration of the time periods for the presentation of their briefs, and c) conceded time extensions to the parties for the submission of their briefs.

7. The Order of the then-President of the Court on December 8, 2009, by which she decided to convene the State, the representatives, and the Inter-American Commission to a public hearing, with the purpose of hearing the allegations of the parties about the eventual continuance of the situation of extreme gravity and the urgency to avoid irreparable damages that motivated the adoption of said measures in favor of the beneficiaries, so as to evaluate the necessity of maintaining the measures in effect.

8. The allegations of the parties at the public hearing regarding the present provisional measures carried out on January 29, 2010, at the seat of the Tribunal.¹

CONSIDERING THAT:

1. Colombia ratified the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") on July 31, 1973, and recognized the jurisdiction of the Inter-American Court, according to Article 62 of the Convention, on June 21, 1985.

¹ The following persons appeared at the hearing: a) for the State of Colombia: Carlos Franco Echeverría, Director of the Presidential Program of Human Rights and DIH; Margarita Rey Anaya, Director of Human Rights and DIH of the Ministry of Foreign Relations; Miguel Soto, Coordinator of the Group of Matters of protection and information of the Board of Human Rights and DIH of the Ministry of Foreign Relations; Ekateria Ortiz Linares, Advisor of the Board of Human Rights and DIH of the Ministry of Foreign Relations; Eduth Claudia Hernández, Director in charge of Human Rights of the Ministry of National Defense; Brigadier General Jorge Rodríguez Clavijo, Chief of Human Rights of the National Army; Lieutenant Colonel John Henry Arango Alzate, Coordinador of Human Rights of the National Police; Coronel Efraín Oswaldo Aragón Sánchez, Advisor of Human Rights of the General Inspection of the National Police; Oswaldo Ramos Arrendó, Chief of the Legal Office of the Administrative Department of Security, and Juliana Bustamante, Advisor of Human Rights of the Administrative Department of Security; b) for the representatives of the beneficiaries: Luz Marina Monzón Cifuentes; Viviana Rodríguez Peña, and Oscar Javier Carbonell Valderrama, representatives of the Colombian Commission of Jurists, and c) for the Inter-American Commission on Human Rights: Lilly Ching and Silvia Serrano, legal advisors.

2. 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. Article 27(1) of the Rules of the Court² provides:

At 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. Under international human rights law, provisional measures are not only precautionary in nature, in that they preserve a legal situation, but also essentially preventive, in the sense that they safeguard human rights, inasmuch as they seek to avoid irreparable damage to persons. Provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.³

5. In its Order of December 7, 1994, the Court adopted provisional measures to protect the life and personal integrity of Ms. María Nodelia Parra, Mr. Gonzalo Arias Alturo, and others, who had offered testimony before the Court in the present case and had been threatened. The measures were rescinded by an Order of the Tribunal on January 31, 1997, after the issuance of the Judgment of reparations and costs of the case and because the State had adopted the necessary actions to fulfill the objective for which they had been ordered. Previously, given that “various witnesses that gave declarations in [the contentious case] ha[d] been harassed, followed, and received intimidating calls after the judgment of the Court regarding the reparations and the Order [...] that rescinded the provisional measures adopted in the case [...] was made public,” by Order of April 16, 1997, the Court ordered the urgent protection of the life and personal integrity of the five prior beneficiaries. Through the Orders of June 3, 1999, July 4, 2006, and February 6, 2008, the Tribunal maintained the measures of protection adopted in favor of Ms. María Nodelia Parra and Mr. Gonzalo Arias Alturo (hereinafter “the beneficiaries”).

6. More than fifteen years after since the adoption of the first provisional measures in favor of the beneficiaries and almost two years since the last Order issued in the present case, the Court finds it timely to analyze the current situation of Mr. Gonzalo Arias Alturo and Ms. María Nodelia Parra and to issue the present Order.

² Rules of the Court approved in its LXXXV Ordinary Period of Sessions, held November 16-28, 2009.

³ Cf. *Case of the “La Nación” Newspaper*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering clause four; *Matters of Matter of Monagas Judicial Confinement Center (“La Pica”); Matter of Yare I and Yare II Capital Region Penitentiary Center; Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison), and Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause six, and *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering clause four.

1) Regarding the beneficiary Gonzalo Arias Alturo

7. The State manifested that, while Mr. Gonzalo Arias Alturo (hereinafter, "Mr. Arias Alturo") was deprived of his liberty in different penitentiary centers, the National Penitentiary and Prison Institute adopted the necessary measures to guarantee his life and personal integrity without him suffering any type of attack. Recently, on November 23, 2009, Mr. Arias Alturo obtained the benefit of conditional liberty, a fact that was communicated to the security bodies of the State and to the Office of Human Rights of the Ministry of the Interior and Justice, for them to provide security measures. Given the insistence of the State to warn the beneficiary that his security measures must be extreme, at the moment he was freed, he manifested that he did not need any protection by the State and that "the only thing he needed was to be set free immediately, under the threat of denouncing kidnapping since they would not let him go." Said situation was communicated to the Defense of the People and of the Commander of the 5th Brigade of the National Army, so as to coordinate whichever security procedure deemed necessary for the beneficiary. Since he was set free, the whereabouts of Mr. Arias Alturo are unknown. On the other hand, the State reiterated that, despite the provisional measures, said beneficiary has not cooperated in an effective manner with the investigation of the forced disappearance of Isidro Caballero Delgado and of Maria del Carmen Santana nor in the search for the mortal remains of the victims.

8. The representatives stated in their briefs that they could not make observations on the situation of Arias Alturo because they had not been called to coordinate or to learn of the adopted measures regarding said person. The beneficiary may be a source of explanation regarding the facts and of the final whereabouts of the victims of the present case, but has not offered information because he does not provide information because he does not count on the necessary security conditions; during his detention "he has been [...] visited by members of the public force at the jails where he had been imprisoned." Also, the representatives specified that said beneficiary did not grant them the power to represent him, but only sent them communications in which he said, for example, that he had been visited "by members of the Army," or that one of his brothers had been assassinated while he was deprived of his liberty, a reason for which he feared to offer information regarding the present case. All together, the representatives provided that they did not have contact with the beneficiary, that they did not know if he was willing to offer information about the case, that they could not affirm effectively if he continues to be in a situation of risk, and that they could not endorse the request of the State to rescind the measures ordered in favor of the beneficiary.

9. The Commission valued the measures adopted by the State regarding Mr. Arias Alturo; nevertheless, it did not present observations regarding the current situation of the beneficiary, nor regarding the request formulated by the State to rescind the provisional measures ordered in favor of said beneficiary.

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10. The Court valued the efforts made by Colombia with the purpose of implementing the provisional measures ordered in favor of Mr. Arias Alturo. In this sense, the State allowed for the beneficiary to serve his sentence of imprisonment in

an individual cell, located in a high security block, and also offered him measures of protection once placed in conditional liberty.

11. Due to its jurisdiction, in the framework of provisional measures, the Court must consider only those arguments that relate strictly and directly with extreme gravity, urgency, and the need to avoid irreparable damage to persons. In this way, to decide if the force of the provisional measures will be maintained, the Tribunal must analyze if the situation of extreme gravity and urgency which determined the adoption of the measures persists, or if new circumstances, equally grave and urgent, merit they be maintained. Any other matter can only be put before the Court through a corresponding contentious case.⁴

12. The maintenance of the measures of protection requires an evaluation regarding the persistence of the situation of extreme gravity and urgency so as to avoid irreparable damages that originate from them,⁵ based on the information gathered from the evidence.⁶ From there, the party that requires that the measures continue must present proof of the reasons for it.⁷

13. The Tribunal ordered the adoption of and maintained the provisional measures in favor of Mr. Arias Alturo due to the threats received for his participation as a witness before the Court, as well as for the investigation of the forced disappearance of the victims of the present case. The beneficiary has been under the protection of the provisional measures for more than fifteen years, and despite this, has expressed that he will not offer information in the mentioned criminal proceeding because he does not feel he can count on the necessary security conditions.

14. The Tribunal has not received concrete or specific information that Mr. Arias Alturo had been the object of any threat or intimidation in the last few years. In this sense, although the representatives mentioned that he had been visited by state agents while deprived of his liberty (*supra* Considering clause 8), the Court does not have information regarding whether such visits were in fact carried out, who were

⁴ Cf. *Matter of James and others*. Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, Considering clause six; *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Court of November 25, 2009, Considering fourth, and *Matter of Guerrero Larez*, Provisional Measures regarding Venezuela. Order of the Court of November 17, 2009, Considering clause sixteen.

⁵ Cf. *Matter of the Kankuamo Indigenous People*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering clause seven; *Matters of Matter of Monagas Judicial Confinement Center ("La Pica")*; *Matter of Yare I and Yare II Capital Region Penitentiary Center*; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*, and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 3, Considering clause four, and *Matter of A. J. and others*. Provisional Measures regarding Haití. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering clause eighteen.

⁶ Cf. *Case of Carpio Nicolle and others*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering clause fifteen; *Matters of Matter of Monagas Judicial Confinement Center ("La Pica")*; *Matter of Yare I and Yare II Capital Region Penitentiary Center*; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*, and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 3, Considering clause four, and *Matter of A. J. and others*, *supra* note 5, Considering clause eighteen.

⁷ Cf. *Case of Carpio and others*, *supra* note 6, Considering clause eighteen.

the alleged visitors, nor have arguments been provided that would permit the Court to be assess the risk or threat of those visits. On the other hand, regarding the alleged assassination of the brother of Mr. Arias Alturo, referred to by the representatives at the public hearing (*supra* Considering 8), the Court points out that minimum and concrete information regarding this fact was not provided nor were arguments raised about the eventual connection of said death with the alleged situation of extreme gravity and urgency of the beneficiary or with the object of the present measures. Based upon the aforementioned, no basis exists which permits the Tribunal to suppose that a situation of risk or threat to the life or personal integrity of Mr. Arias Alturo exists.

15. Additionally, in accordance with what was presented by the State at the public hearing, Mr. Arias Alturo had expressly renounced the measures of protection offered at the beginning of his conditional liberty (*supra* Considering 7). In this respect, neither the representatives nor the Inter-American Commission presented arguments or information that could contradict that informed by the State.

16. Finally, in accordance with the information presented by Colombia, the whereabouts of Mr. Arias Alturo are unknown. For its part, the representatives provided that "they also did not ha[ve] contact with [said beneficiary]." In this respect, the Court reminds that the useful effect of the provisional measures depends, in a great deal, on the real possibility that the measures be implemented.⁸ In the present case, the beneficiary has voluntarily rejected the possibility to be located and protected by the State through the provisional measures.

17. Given the aforementioned, the Inter-American Court considers that the elements that motivated the adoption of the provisional measures in favor of said beneficiary do not subsist and concludes that it is not possible to allow for the continuance of the provisional measures granted in his favor.

2) Regarding the beneficiary María Nodelia Parra

18. The State informed that Ms. María Nodelia Parra (hereinafter "Ms. Parra") continues relying upon the measures of protection ordered and specified its security scheme. The State informed that on December 11, 2009, the Technical Committee of the Office of Special Protection of the Administrative Department of Security (DAS) analyzed the study of the level of risk and degree of threat to the beneficiary, and concluded that her level of risk was ordinary. Also, the study of the level of risk of April 24, 2009, as well as the reports of the Third Prosecutor's Office of the National Unit of Human Rights and International Humanitarian Law and of the Technical Body of Investigation of Bucaramanga affirmed that no new facts exist that affirm a risk to the life or physical integrity of Ms. Parra.

19. Regarding the alleged illegal activities of intelligence carried out by DAS, Colombia informed that the request for financial information regarding the beneficiary is dated May 21, 2004, meaning, six years have passed, a period of time in which Ms. Parra has repeatedly stated to the authorities that facts had not been

⁸ Cf. *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause thirteen.

presented which threaten her security. Therefore, the document provided by the representatives, which is the object of a criminal investigation by the Prosecutor General's Office of the Nation (FGN), does not demonstrate that Ms. Parra is in real, actual, and imminent danger.

20. In regards to the allegations of the representatives at the public hearing about the supposed recent developments in the investigation of the forced disappearance of Isidro Caballero Delgado and Maria del Carmen Santana (*infra* Considering 22), the State proposed to perform a new study of the level of risk to Ms. Parra, which will be carried out together with the representatives.

21. The representatives indicated some problems with the implementation of the protection scheme of Ms. Parra and confirmed that it "has always been in the charge of [...] DAS, by request and insistence of the [beneficiary]." They manifested that if the provisional measures are rescinded, since the performed internal reports indicate an ordinary level of risk, the beneficiary would not be able to be included in the internal protection programs. Similarly, they affirmed that the risk to Ms. Parra persists as long as she continues demanding the authorities investigate the forced disappearance of Isidro Caballero Delgado and Maria del Carmen Santana. They reiterated the possible flaws of the study of the level of risk and degree of threat of April 24, 2009, signaling that the beneficiary referred to the background of the present case and its union activities in the interview, but said study did not present any analysis or foundation in order to conclude that her level of risk derived from her relation to a union.

22. On the other hand, the representatives indicated that: a) "recently [the beneficiary] has not been followed, threatened, or received any calls;" b) the last intimidating fact against her occurred more than five years ago and this was "the perception that her communications were intercepted," and c) "before said occurrence, there was a very concrete fact of a threat and risk, not only to her, but also to her son, and this was in December 1998, when [...] a member of the Police followed them, their vehicle, and the movements she made." In the opinion of the representatives, the present lack of threats and harassments is due to the lack of motivation in the criminal investigation of the case since 2003. Nevertheless, the situation of risk for Ms. Parra was seriously reactivated in 2009, given that the Prosecutor's Office in charge of said procedure resolved to act in an organized form with the purpose of moving forward with the investigation, carrying out some diligences such as measures to locate the military and police that could offer testimony about the facts and the new testimony given by the beneficiary on November 11, 2009. Furthermore, the Prosecutor's Office has tried to implement a revision process in order to remove the legal obstacles that impede the criminal proceedings against members of the Army that were identified as participants of the forced disappearance. In this way, the conduct of the referenced body revealed "a great number of activities that objectively reflect the interest and the objective decision, evidently founded and not hypothetical, of a motivation to carry out the investigation." Said advances must be accompanied with due protection to those that participate in the procedures, given that, as has been indicated by the Prosecutor's Office in its report of March 5, 2008, among witnesses there is a persistent fear of giving testimonies.

23. Likewise, the representatives expressed their worry regarding the alleged illegal activities of the DAS intelligence, alleging that the beneficiary "was monitored

to find information about her income" on May 21, 2004, without any prior investigation existing against her to justify or legitimate this gathering of information. Said activities were carried out "in the framework of operations clearly defined by DAS destined to offer a defense [to] the State before international organizations [...] in order to monitor the representatives of the victims and the victims; and in this list of individuals, not only is Maria Nodelia Parra found, but also [other] people that also have provisional measures [...] in their name; this is not an isolated fact nor of little relevance for this case and for the imminence of the risk [...] against [the beneficiary],"

24. In relation to Colombia's proposal regarding the carrying out of a joint and new study of the risk, the representatives manifested their willingness to work together with the State on the legal and factual aspects on which the new study of the level of risk to Ms. Parra will be based.

25. The Commission values the measures adopted by the State in order to protect the life and personal integrity of the beneficiary. It reiterated that the present measures are fundamentally related with the activities of Ms. Parra as a civilian party to the criminal investigation for the mentioned forced disappearances. In the present case, the situation of risk increased or decreased in conformity with the advances carried out in such investigation. In this sense, the lack of threats during a determined time cannot be evaluated on their own, rather it is reasonable to infer that the lack of threats is a result of the inactivity of the investigative process. In this manner, considering the reactivation of the investigation at the end of 2009, the Commission expressed its worry regarding the possibility that new facts may occur that would put the life and personal integrity of the beneficiary at risk. In this sense, it manifested its worry regarding the alleged operations of intelligence carried out by the DAS.

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25. Regarding the proposal of the State to elaborate a new study of the level of risk and degree of threat for Ms. Parra, with which the representatives were in agreement, the Court finds it pertinent to carry out an analysis about the eventual need to maintain the present provisional measures in favor of the beneficiary in its next ordinary period of sessions. On said occasion, the Tribunal will examine the abovementioned allegations together with the new study of the risk to the beneficiary, which must be received by the Secretary of the Court no later than March 31, 2010. In the case that said study of risk is not received on the specified date, the Tribunal will still analyze the matter during the abovementioned period.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in use of the powers conferred upon it in Article 63(2) of the American Convention on Human Rights and Article 27 of the Rules of the Court,

RESOLVES TO:

1. Rescind and conclude the provisional measures ordered by the Tribunal in its Orders of April 16, 1997; June 3, 1999; July 4, 2006, and February 6, 2008, regarding Gonzalo Arias Alturo.
2. Require the State to continue adopting the necessary measures to protect the life and personal integrity of Maria Nodelia Parra.
3. Request the State to present to the Tribunal, by no later than March 31, 2010, a new study of the level of risk and degree of threat regarding Maria Nodelia Parra, in the terms of Considering clause 26 of the present Order.
4. Request the Secretary of the Inter-American Court to notify the present Order to the State of Colombia, to the representatives of the beneficiaries, and to the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Registrar

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Registrar