

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 25, 2011**

PROVISIONAL MEASURES WITH REGARD TO COLOMBIA

CASE OF CABALLERO DELGADO AND SANTANA

HAVING SEEN:

1. The judgments on merits, and on reparations and costs in the case of Caballero Delgado and Santana delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") 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, February 6, 2008, December 8, 2009, and February 3, 2010, as well as the Orders of the President of the Court of December 10, 2007, and December 8, 2009, all issued in relation to the present provisional measures. In its most recent Order, the Court decided, *inter alia*:

1. To lift and conclude the provisional measures ordered by the Court in its Orders of April 16, 1997, June 3, 1999, July 4, 2006, and February 6, 2008, in favor of Gonzalo Arias Alturo.

2. To require the State to continue adopting the necessary measures to protect the life and personal integrity of Maria Nodelia Parra.

3. To ask the State to present to the Court, by March 31, 2010, at the latest, a new assessment of the level of risk and degree of threat in relation to Maria Nodelia Parra, in the terms of the twenty-sixth considering paragraph of the Order.

3. The arguments of the parties during the public hearing regarding these provisional measures held at the seat of the Court on January 29, 2010.

4. The briefs of March 31, May 4, June 1, August 19 and October 22, 2010, with attachments, in which the Republic of Colombia (hereinafter "the State" or "Colombia"), *inter alia*, (a) requested extensions in order to forward the new assessment of the level of risk and degree of threat requested by the Court; (b) provided information on a meeting that had been held with the beneficiary and her representatives in relation to the preparation of the said assessment, and (c) presented specific information regarding the Court's request to prepare the new risk assessment and evaluation of the actual situation of protection of María Nodelia Parra (hereinafter also "the beneficiary" or "Mrs. Parra").

5. The briefs of June 16 and 30, 2010, and their attachments, with which the representatives of the beneficiary (hereinafter also "the representatives"), *inter alia*, presented their observations on the information forwarded by the State on the preparation of a new assessment of the level of risk and degree of threat.

6. The brief of July 26, 2010, in which the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) presented its observations on the reports of the State and the briefs of the representatives.

7. The notes of September 3 and October 25, 2010, in which the Secretariat of the Court, on the instructions of the Court in plenary and the President of the Court, respectively, reiterated to the State the request that it forward the new assessment of the level of risk and degree of threat in relation to the beneficiary of the measures as required in the Order of February 3, 2010.

CONSIDERING THAT:

1. Colombia ratified the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) on July 31, 1973, and accepted the jurisdiction of the Inter-American Court, in accordance with Article 62 of the Convention, on June 21, 1985.

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.” This provision is also regulated in Article 27 of the Court’s Rules of Procedure.¹

3. According to the provisions of Article 63(2) of the Convention, the State is bound to adopt the provisional measures ordered by the Court, because a basic principle of international law, supported by international case law, requires States to comply with their treaty-based obligations in good faith (*pacta sunt servanda*).²

4. Under international human rights law, provisional measures are not only preventive in nature, in that they preserve a legal situation, but also essentially protective, since they safeguard human rights, inasmuch as they seek to avoid irreparable damage to persons. Provided that 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 María Nodelia Parra and other persons who had testified before the Court in the instant case and had been threatened. The

¹ The Court’s Rules of Procedure adopted at its eighty-fifth regular session held from November 16 to 28, 2009.

² Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Court of June 14, 1998, sixth considering paragraph; *Case of Eloisa Barrios et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 25, 2010, third considering paragraph, and *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of November 26, 2010, fourth considering paragraph.

³ Cf. *Case of the “La Nación” Newspaper.* Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph; *Matter of Aragua Detention Center “Tocorón Prison”.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of 24 November 24, 2010, sixth considering paragraph, and *Matter of Alvarado Reyes et al*, *supra* note 2, fifth considering paragraph.

measures were lifted by an Order of the Court of January 31, 1997, following the delivery of the judgment on reparations and costs in the case, because the State had adopted the necessary measures to fulfill the purpose for which the measures had been ordered. Subsequently, given that “several witnesses who testified in [the contentious case] ha[d] been harassed, followed, and received threatening calls after the publication of the Court’s judgment [...] on reparations and the Order [...] that lifted the provisional measures adopted in the case,” in an Order of April 16, 1997, the Court required the urgent protection of the life and personal integrity of the five previous beneficiaries. In the Orders of June 3, 1999, July 4, 2006, February 6, 2008, and February 3, 2010, the Court maintained the measures or protection in favor of Mrs. Parra.

6. Given that 16 years have elapsed since the adoption of the first provisional measures in favor of the beneficiary, and that Colombia has requested that they be lifted on several occasions, the Court considers it appropriate to re-examine the information presented.

7. Based on its jurisdiction, in the context of provisional measures, the Court can only consider arguments that are strictly and directly related to the extreme gravity and urgency and need to avoid irreparable damage to persons. Hence, in order to decide whether to maintain the provisional measures in force, the Court must analyze whether the situation of extreme gravity and urgency that led to their adoption persists, or whether new circumstances that are equally grave and urgent warrant keeping them in force. Any other matter may only be brought to the Court’s attention through a contentious case.⁴

a) Arguments of the parties

8. The State indicated that Mrs. Parra continues to benefit from the measures of protection ordered and described the security system that she has received since 2001 under the protection program of the Ministry of the Interior and Justice. It advised that the most recent assessment of the beneficiary’s level of risk and degree of threat prepared by the Administrative Department of Security (DAS) concluded that her level of risk was ordinary, and that this assessment “would be re-evaluated by the Risk Regulation and Evaluation Committee (CRER).”

9. In accordance with the Court’s request in the third operative paragraph of its Order of February 3, 2010, that it forward a new assessment of the level of risk and degree of threat, the State reported that it had held a meeting with the beneficiary and her representatives on May 3, 2010, “in order to comply with the undertaking made [...] at the public hearing on January 29, 2010.” Regarding the preparation of the new risk assessment, the State declared that: (i) it must be prepared under the Protection and Assistance Program for Victims, Witnesses and others who intervene in criminal proceedings of the Office of the Attorney General of Colombia (hereinafter “Witness Protection Program”), and not under the Protection Program of the Ministry of Justice and the Interior, which had been the one applicable to the beneficiary and whose latest report had “yielded an ordinary result” for the level of risk, since the risk in question arose from her participation in the criminal investigation of Mr.

⁴ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, sixth considering paragraph; *Matter of the Communities of the Jiguamiandó and the Curbaradó.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, sixth considering paragraph, and *Matter of the Colombian Jurists Commission.* Order of the Inter-American Court of Human Rights of November 25, 2010, seventh considering paragraph.

Caballero Delgado's forced disappearance, and not from her activities as a trade unionist; (ii) the beneficiary must give her express consent to participate in this program so that the risk assessment can be carried out; (iii) the Witness Protection Program includes, *inter alia*, such protective measures as a change of domicile or a relocation away from the danger zone, and (iv) the beneficiary's refusal to participate in the Witness Protection Program must be interpreted by the Court as Mrs. Parra's rejection of protection and, consequently, in keeping with the criteria established by the Court in its previous Order concerning Mr. Arias Alturo, the current provisional measures must be lifted. Despite the foregoing, the State indicated that "in the event that new threats against the beneficiary materialize, [it will provide her with] the institutional support of the National Police for security measures." Subsequently, Colombia advised that the Ministry of Justice and the Interior had asked the National Police to "make an assessment of the level of risk and degree of threat that examined the information that the beneficiary [...] had provided the State on her participation in the criminal proceedings," without this implying that the Ministry of Justice was competent to provide protection to Mrs. Parra.

10. Regarding developments in the criminal investigations into the forced disappearance of Mr. Caballero Delgado and Mrs. Santana, the State indicated that the Prosecutor General's Office had taken several measures, including surveys, exhumations, taking statements, and the identification of persons involved in the case, despite which no positive results had been obtained in locating the remains of the two victims. Regarding the investigation into the threats against the beneficiary, the State reported that "although the origin of the threats had not been determined, [it] has taken pertinent measures to clarify the reported facts." The measures included a report by the Technical Investigation Unit dated March 30, 2010, in which it noted that "Mrs. [...] Parra stated that a threatening telephone message had been left for her at her workplace"; consequently, in June 2010, it requested a record of the telephone calls made to and from her workplace.

11. The representatives indicated that the State "had complied with the pertinent measures of protection that provide the beneficiary's current security system." They indicated that, after several years and some logistic problems in the implementation of the protection system, Mrs. Parra had grown accustomed to living with the system, which "has always been the responsibility of the DAS, at her demand and insistence," so that she wished to continue under this protection system. They stated that, despite the existence of these measures of protection, the State had not complied with the obligation to "expedite the internal investigations into the threats and harassment [suffered by the beneficiary]," specifically: (a) harassment by a police agent when the beneficiary's father died; (b) being followed by members of the National Police on motorcycles; (c) the intervention of her telephone line, and (d) the death threats after she testified in the domestic criminal proceedings on November 11, 2009. They added that the beneficiary "does not feel safe" since she does not know the source of the danger and threats.

12. Regarding the risk assessments, they reiterated the possible failings in the assessment made on April 24, 2009, including the fact that it did not take into account that the risk arose from her actions in promoting the criminal investigations carried out in the domestic sphere, but rather only considered her condition as a trade unionist. Regarding the preparation of a new risk assessment, they indicated that it was illogical that Mrs. Parra could agree to participate in the new Witness Protection Program, without previously receiving information on the risk assessment,

the measures of protection that this program would provide, and the consequences for the already exceptional living conditions of the beneficiary.

13. At the public hearing of January 9, 2010, the representatives indicated that: (a) "recently [the beneficiary] has not been followed, threatened, or received any calls;" (b) the last threatening act against her occurred more than five years ago and involved "the perception that her communications were being intercepted," and (c) "before this, there was a very specific threat and danger, not only for her, but also for her son, and this was in December 1998, when [...] a member of the Police followed them, their vehicle, and her movements." In the representatives' opinion, the present absence of threats and harassment is due to the failure to advance the criminal investigation into the case since 2003. Nevertheless, the situation of risk for Mrs. Parra was reactivated seriously in 2009, when the Prosecutor's Office in charge of the said procedure decided to systematize activities in order to advance the investigation, and took some actions such as measures to locate members of the Army and Police who could testify about the facts, and another statement from the beneficiary on November 11, 2009. In addition, the Prosecutor's Office has tried to file an appeal for review in order to remove the legal obstacles that prevent the criminal prosecution of members of the Army who were identified as participants in the forced disappearance. Thus, the Office's conduct reveals "numerous activities that objectively reflect the interest and the objective, sustainable rather than hypothetical determination to conduct the investigation." This progress must be accompanied with due protection for those who participate in these procedures, because, as the Prosecutor's Office indicated in its report of March 5, 2008, the witnesses continue to be afraid of testifying.

14. During the above-mentioned public hearing, the Commission assessed the measures adopted by the State to protect the life and personal integrity of the beneficiary. It recalled that, essentially, the present measures are related to Mrs. Parra's activities as a civil party to the criminal investigation into the said forced disappearance. In the instant case, the situation of risk increases or decreases in keeping with the progress in the said investigation. The absence of threats during a certain time cannot be evaluated on its own, but rather it is reasonable to infer that it is a result of inactivity in the investigative process. Hence, considering the reactivation of the investigation at the end of 2009, the Commission expressed its concern regarding the possibility of new acts that would endanger the life and personal integrity of the beneficiary. Subsequently, it indicated that it "was awaiting the risk assessment to be carried out by the State" and referred to the lack of information regarding "the investigations into the facts that gave rise to the provisional measures and [whether] they had been linked to or obtained feedback from the investigation into the forced disappearance of Mr. Caballero Delgado," a measure that would contribute to overcoming the risk of irreparable harm in this case.

b) *Considerations of the Court*

15. The Court recalls that, when ordering measures of protection, the principle of *prima facie* is the standard used for assessing the requirements of the Court or the person presiding it and, faced with the need for protection, it has sometimes been necessary to apply hypotheses.⁵ Despite this, the need to maintain measures of

⁵ Cf. *Case of Raxcacó Reyes et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, tenth considering paragraph; *Matter of Alvarado Reyes et al.*, *supra* note 2, twenty-seventh considering paragraph, and *Matter of the Mendoza*

protection requires the Court to make a more rigorous evaluation of the persistence of the situation that gave rise to them.⁶ If a State requests the lifting or modification of the provisional measures ordered, it must present sufficient evidence and arguments to allow the Court to assess that the risk or threat no longer complies with the requirements of extreme gravity and urgency to avoid irreparable damage. In addition, the burden of proof and argument on the beneficiaries and on the Commission will increase as time passes and there are no new threats. Evidently, the fact that there are no new threats may be due, precisely, to the effectiveness of the protection provided or the dissuasive effects of the Court's orders. Nevertheless, the Court has considered that the passage of a reasonable period of time without threats or intimidation, added to the absence of an imminent risk, may lead to the lifting of the provisional measures.⁷

16. In addition, the Court must take into account that, according to the Preamble of the American Convention, international protection in the form of a convention "reinforces or complements the protection provided by the domestic law of the American States." Therefore, should there be evidence that the State in question has developed effective mechanisms or measures of protection for the beneficiaries of the provisional measures, the Court could decide to lift the provisional measures, delegating the obligation to protect to the principal body responsible for them; namely, the State.⁸ Should the Court lift the provisional measures for this reason, the State would be bound, in keeping with its obligation to guarantee human rights, to maintain any protective measures it might have adopted and that the Court had considered effective, for as long as the circumstances require them.

17. In recent years, the present provisional measures have been maintained owing to the connection that the representatives made between the information presented by the State on the investigations in the domestic criminal proceedings with the increase in the risk that this created for the beneficiary owing to her participation in those investigations. However, this presumed risk has been alleged before the Court on successive occasions as a potential danger, unrelated to specific risk factors.

18. In this regard, the Court observes that, after having reported merely the said potential danger in the context of the procedure of monitoring compliance with the judgment in this case, the representatives indicated that "death threats had been made against Mrs. [...] Parra shortly after she testified in the criminal proceedings on

Prisons. Provisional measures with regard to the Argentine Republic. Order of the Inter-American Court of Human Rights of November 26, 2010, thirty-ninth considering paragraph.

⁶ Cf. *Matter of the Kankuamo Indigenous People*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, seventh considering paragraph; *Case of the Mapiripán Massacre*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of September 2, 2010, twenty-sixth considering paragraph, and *Matter of Eloisa Barrios et al*, *supra* note 2, fourth considering paragraph.

⁷ Cf. *Matter of Gallardo Rodríguez*. Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, eleventh considering paragraph; *Case of the Mapiripán Massacre*, *supra* note 6, twenty-eighth considering paragraph, and *Matter of the Mendoza Prisons*, *supra* note 5, thirty-ninth considering paragraph.

⁸ Cf. *Matter of Luis Uzcátegui*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 20, 2003, thirteenth considering paragraph; *Case of the Plan de Sánchez Massacre*. Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 8, 2009, sixth considering paragraph, and *Case of Mack Chang et al*. Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of November 16, 2009, sixth considering paragraph.

[...] November 11, 2009.”⁹ The Court does not have detailed information concerning this threat, or supporting documentation to substantiate these alleged facts in the procedure of monitoring compliance. To the contrary, the Court observes that two months after the alleged threat, during the public hearing of January 9, 2010 (*supra* thirteenth considering paragraph), convened to hear the arguments of the parties on the possible persistence of a situation of extreme gravity and urgency in order to assess the need to maintain the measures in force, the representatives not only failed to refer to this alleged threat, but stated that Mrs. Parra’s “most recent situation denoting risk was the perception that her communications were being intercepted. And this [...] was [approximately] five years ago,” and that “recently [...] she has not been followed, threatened or received telephone calls.”

19. Moreover, regarding the assessment of the level of risk and degree of threat that the State was requested to make, the Court noted in its last Order that Colombia had made preparation of the assessment conditional on the beneficiary’s prior agreement to participate in the Witness Protection Program and that, despite the Court’s repeated requests that the State submit the aforementioned report without making it conditional on this prior participation by the beneficiary, the State had not complied with the Court’s request. Nevertheless, the Court recalls that the most recent risk and threat assessments of the beneficiary’s situation prepared by the protection system provided by the Ministry of Justice and the Interior, which she wishes to retain, show an “ordinary” level of risk.

20. Additionally, the Court recalls that despite some disagreements among the parties, to date the State has maintained the measures of protection provided to Mrs. Parra in compliance with the orders of the Court’s and has complied, although irregularly, with its duty to provide information on the measures taken to implement these provisional measures. Also, even though it had asked that the provisional measures be lifted, Colombia has expressed its commitment to offer protective measures should new threats materialize (*supra* ninth considering paragraph).

21. Regarding the obligation to investigate the reported facts that gave rise to these measures, Article 1(1) of the Convention establishes the general 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. Consequently, regardless of the existence of specific provisional measures, the State has a special obligation to ensure the rights of people in situations of risk and must expedite the investigations necessary to elucidate the facts and, if appropriate, punish those responsible.¹⁰ In conducting this investigation, the State in question must make every effort to determine all the facts surrounding the threat and how they were manifested; to determine whether there is a pattern of threats against the beneficiary or the group or entity to which he or she belongs; to determine the object or purpose of the threat, and to determine those responsible for the threat and, if appropriate, punish them.

⁹ The Court was provided with this information in a brief from the representatives dated May 13, 2010, in the context of the procedure of monitoring compliance with the judgment handed down in this case, and mentioned briefly as a fact that the State had not investigated in the representatives’ brief of June 30, 2010, submitted during the processing of these provisional measures.

¹⁰ Cf. *Case of Velásquez Rodríguez*. Provisional measures With regard to Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, third considering paragraph; *Matter of Mery Naranjo et al. Provisional measures with regard to the Republic of Colombia*. Order of the Inter-American Court of Human Rights of November 25, 2010, seventy-eighth considering paragraph, and *Case of Eloísa Barrios et al, supra* note 2, twenty-fourth considering paragraph.

22. Moreover, the Court reiterates¹¹ that an alleged lack of investigation by the State does not necessarily constitute circumstances of extreme gravity and urgency that require maintaining the provisional measures. In addition, at times the obligation to investigate may be prolonged for an extended period, during which the threat or risk may not necessarily remain extreme or urgent. Also, the Court has stated that the analysis of the effectiveness of the investigations and proceedings in relation to the facts that led to the provisional measures, corresponds to the examination of the merits of the case.¹² In brief, non-compliance with the obligation to investigate is not *per se* sufficient reason to maintain the provisional measures.

23. In conclusion, the Court observes that, over the past five years, it has not been kept informed in a consistent, detailed, and well-founded way about specific situations of risk that the beneficiary has faced, and considers that the hypothetical risk of threats against her for her participation in the domestic criminal proceedings and the failure to clarify the facts that gave rise to the adoption of provisional measures in this case is not sufficient to conclude that a situation of extreme gravity and urgency persists likely to cause her irreparable harm.

24. In any event, the Court recalls that if, in the course of the domestic investigations that are underway, some type of specific situation of risk or threat should occur that places Mrs. Parra's life or physical integrity at risk, the Court can analyze the situation pursuant to its authority under Article 63(2) of the Convention.

25. Lastly, the Court reiterates that Article 1(1) of the Convention establishes the general obligation of States Parties to respect the rights and freedoms enshrined therein and to guarantee their free and full exercise to all persons subject to their jurisdiction, in all circumstances. Moreover, provisional measures are exceptional in nature and are complementary to this general obligation of the States. In this regard, the presumptions that cause the Court to lift provisional measures can never imply that the State is relieved of its treaty-based protection obligations. Hence, the Court emphasizes that, irrespective of the existence of specific provisional measures, the State is obliged to guarantee Mrs. Parra's rights.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of the authority granted by Article 63 (2) of the American Convention on Human Rights and Article 27 of the Rules of Procedure,

DECIDES:

¹¹ Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights, of July 6, 2009, twenty-fourth considering paragraph; *Case of the Plan de Sánchez Massacre*, *supra* note 8, sixteenth considering paragraph, and *Matter of Lilliana Ortega et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, seventeenth considering paragraph.

¹² Cf. *Matter of Pilar Noriega García et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of February 6, 2008, fourteenth considering paragraph; *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to the Republic of Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, twenty-ninth considering paragraph, and *Matter of Lilliana Ortega et al.*, *supra* note 11, eighteenth considering paragraph.

1. To lift and conclude the provisional measures ordered by the Court in its Orders of April 16, 1997, June 3, 1999, July 4, 2006, February 6, 2008, and February 3, 2010, in favor of María Nodelia Parra.
2. To require the Secretariat of the Court to notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries, and the State of Colombia.
3. To close this case file.

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
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary