

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

REQUEST FOR ADOPTION OF PROVISIONAL MEASURES

CASE OF DE LA CRUZ FLORES v. PERU

HAVING SEEN:

1. The judgment on merits, reparations and costs (hereinafter "the judgment") delivered in this case by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 18, 2004.

2. The orders of the Inter-American Court of November 23, 2007, and September 1, 2010, on monitoring compliance with judgment in this case.

3. The brief of January 6, 2011, in which the representative of María Teresa De La Cruz (hereinafter "the representative") submitted a request for provisional measures under Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 27 of the Rules of Procedure of the Court¹ (hereinafter "the Rules of Procedure"). The purpose of the request was for the State of Peru (hereinafter "the State" or "Peru") to "annul all the measures ordered by its judicial, police and administrative bodies to execute the judgment of the Supreme Court of Peru" of November 23, 2009, "that are intended to have adverse affects on" Mrs. De La Cruz Flores, "including, the national and international order to arrest and detain her." On January 27 2011, the representative presented complementary information concerning this request and on February 11, 2011, withdrew it."

4. The communications of January 25 and February 4 and 11, 2011, in which the State forwarded its observations on the request for provisional measures submitted by the representative.

5. The briefs of January 21 and February 7 and 15, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented its observations on the request for provisional measures submitted by the representative.

CONSIDERING THAT:

1. Peru has been a State Party to the American Convention since July 28, 1978, and accepted the compulsory jurisdiction of the Court on January 21, 1981.

2. Article 63(2) of the American Convention stipulates that, "in 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

* Judge Diego García-Sayán, a Peruvian national, has recused himself from hearing the monitoring of compliance in this case, in accordance with Articles 19(2) of the Statute and 19 of the Court's Rules of Procedure.

¹ Rules of Procedure of the Court approved at its eighty-fifth regular session held from November 16 to 28, 2009.

matters it has under consideration. With regard to a case not yet submitted to the Court, it may act at the request of the Commission." This provision signifies that the adoption by the State of the provisional measures ordered by this Court is compulsory, because a basic principle of international law, upheld by international case law, indicates that States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).²

3. According to Article 27(1) of the Rules of Procedure of the Court, "at any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention."

4. Under international human rights law, the purpose of provisional measures is not merely precautionary, in the sense that they preserve a juridical situation, but essentially protective because they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. The measures are applicable provided that the basic requirements of extreme gravity and urgency and the need to avoid irreparable damage to persons are met. In this way, provisional measures become a real jurisdictional guarantee of a preventive nature.³

a) Request of the representative and observations of the parties

5. The victim's representative indicated that, in a judgment of September 23, 2010, handed down by the National Criminal Chamber of the Supreme Court of Justice of Peru "IN RESPONSE [to the] supreme writ of execution" of November 23, 2009, that "ordered the arrest" of Mrs. De La Cruz Flores and, "since it appears from the case file that there is no record of the official note sent to the Requisition Division of the National Police, the prompt national or international location and arrest [of Mrs. De La Cruz Flores] is ORDERED." In this regard, the representative indicated that:

a) "The location and arrest warrant ordered by the State" is "imminent" and poses "a serious threat to the liberty" of Mrs. De La Cruz Flores, "because it was issued after the Court had decided [...] in its Order of September 1, 2010, that the State had not observed the requirements of the principles of legality, non-retroactivity and due process in the second trial of Mrs. De La Cruz; and ordered that the State ensure that the legal consequences of that non-compliance would not give rise to any charges against the victim";

b) "The adoption of a provisional measure by the Court would avoid the detention of Mrs. De La Cruz; otherwise nothing could prevent it," and

c) "The purpose of the measure is [...] to avoid irreparable damage" because "[the] return [of Mrs. De La Cruz] to prison under [...] conditions [characterized as cruel, inhuman and degrading] would result in her

² Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph; *Matter of María Lourdes Afiuni*. Provisional measures with regard to Venezuela. Order of the President of the Inter-American Court of Human Rights of December 10, 2010, fourth considering paragraph, and *Matter of José Luis Galdámez Álvarez et al.* Provisional measures with regard to Honduras. Order of the President of the Inter-American Court of Human Rights of December 22, 2010, third 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 María Lourdes Afiuni*, *supra* note 2, sixth considering paragraph, and *Matter of José Luis Galdámez Álvarez et al.*, *supra* note 2, sixth considering paragraph.

revictimization, which would have serious consequences for her health, [...] life and future.”

6. The Commission considered that “the decision of the National Criminal Chamber [...] constitutes a further act of non-compliance with the judgment of the Inter-American Court and disregards the conclusions of the Court in its Order of September 1, 2010.” Thus, the Commission considered that “it is the Court’s responsibility to assess the different mechanisms available - including provisional measures – and select the one that is most appropriate for requiring the Peruvian State to comply with the Court’s judgment in order to avoid a further human rights violation to the detriment of the victim.” In addition, the Commission noted “that, although the date of the decision of the National Criminal Chamber is subsequent to the adoption of the Order of the Inter-American Court, it is, in fact, prior to the notification of the Order, which occurred on September 22, 2010.” Thus, the Commission considered that “the decision could have resulted from the fact that the respective judicial authorities were unaware of the Court’s order.”

7. For its part, the State asked that the request for provisional measures presented by the representative be declared inadmissible, taking into account the decision of January 24, 2011, issued by the Transitory Criminal Chamber of the Supreme Court of Justice, which:

a) Noted that, in the order issued by the Inter-American Court on September 1, 2010, the Court considered that the second trial of Mrs. De La Cruz Flores “was not in compliance” with the provisions of the judgment on merits, reparations, and costs delivered on November 18, 2004;

b) Indicated “the final and non-appealable nature of the judgments of the Court”, based on which “they must be implemented promptly and fully by the State,” and

c) Consequently, “declared the nullity of the supreme writ of execution of November 23, 2009,” and “annulled the location and arrest order” for Mrs. De La Cruz Flores, “to take effect on that day for the corresponding entities.”

8. In response to the information submitted by the State, the representative indicated, “that she had not been notified of the decision of the Transitory Criminal Chamber of the Supreme Court of January 24, 2011.” In this regard, she noted that, “in order to have legal effect in Peru and, consequently, not constitute a serious and urgent threat against Mrs. De La Cruz, it should not only be notified to her, but also copies should be attached of the official notes sent to the Peruvian police authorities advising that the national and international detention and arrest order for Mrs. De La Cruz had been annulled.” For its part, the Inter-American Commission “assessed positively” the decision issued by the Supreme Court of Justice on January 24, 2011, and “considered it pertinent that the State submit the supporting documentation to the Court confirming that, in practice, the necessary measures have been adopted in relation to the authorities involved to ensure that the supreme writ of execution of November 23, 2009, will have no effects on Mrs. De La Cruz’s situation.”

9. In this regard, the State forwarded copies of official notes No. 230-2011-S-SPT-CS and No. 231-2011-S-SPT-CS of January 24, 2011, in which the Transitory Criminal Chamber of the Supreme Court of Justice requested the Head of INTERPOL-Lima and the Head of the Requisition Division of the Judicial Police, respectively, to “annul the national and international orders for the location and arrest” of Mrs. De La Cruz Flores. In addition, the State indicated that “the notification procedure is within the period established in the Notification

Regulations," and "therefore no delay can be claimed." In any case, the State noted that, on January 25, 2011, the representative "was informed of the content of the said decision," in "the meeting she held with the lawyer from the Supranational Attorney's Office, who handed her the decision." Finally, the State indicated that "it is not judicial practice to notify the litigants of the official notes sent by the Judiciary to the different entities, [...] but rather the responsibility of the defense counsel or interested party, should they consider it pertinent, to verify that these have been sent, without this involving the impairment of any right."

10. Finally, the representative "commended the measures taken by the Peruvian State to implement the decision of the Supreme Court of Justice of [...] Peru to send the corresponding communications to police authorities informing them of the decision to annul the international detention and arrest orders" against Mrs. De La Cruz Flores. Hence, the representative "withdrew the request for provisional measures."

b) Considerations of the Court

11. After analyzing the information presented by the parties, and taking into account the withdrawal of the request for the adoption of provisional measures by the victim's representative, the Court considers that, at the time of issuing this order, the said request is purposeless. In this regard, the Court orders the closure of the file on this request for adoption of provisional measures for Mrs. De La Cruz Flores.

12. Despite this, the Court reminds the State that it must continue to adopt the necessary measures to comply with the obligation imposed in the first operative paragraph of the judgment on merits, reparations, and costs in this case of November 18, 2004, which consists in "observing the principle of legality and non-retroactivity established in Article 9 of the American Convention and the requirements of due process in the new trial of María Teresa De La Cruz Flores" (*supra* having seen paragraph 1). The Court will continue analyzing the status of implementation of this measure, in the context of monitoring compliance with the judgment

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of its Rules of Procedure,

DECIDES:

1. To close the file on this request for the adoption of provisional measures in favor of María Teresa De La Cruz Flores, as it is purposeless, in view of its withdrawal by the representative of the victim.

2. To require the Secretariat of the Court to notify this Order to the State of Peru, the Inter-American Commission on Human Rights, and the representative of the victim.

Leonardo A. Franco
Acting President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra Alessandri
Secretary