

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JULY 6, 2004**

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

**CASE OF THE "EL NACIONAL" AND "ASÍ ES LA NOTICIA" NEWSPAPERS
V. VENEZUELA**

HAVING SEEN:

1. The June 25, 2004 brief that the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 25 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), submitted to the Court seeking provisional measures for the persons working at the "*El Nacional*" and "*Así es la Noticia*" newspapers, in the matter of the Republic of Venezuela (hereinafter "the State" or "Venezuela"), for protection of their lives, the integrity of their persons and freedom of expression.

2. The Inter-American Commission's arguments are based on the following allegations of fact:

- a) on seven different occasions in 2002, the Commission granted precautionary measures on behalf of journalists in Venezuela, among them journalists working at the "*El Nacional*" and "*Así es la Noticia*" newspapers. It extended many of these precautionary measures up to the present year, to protect the lives, the integrity of person and freedom of expression of journalists, media executives, camera personnel and photographers;
- b) on January 7, 2002, citizens belonging to the *Movimiento Bolivariano 200* and the so-called *Círculos Bolivarianos* appeared at the offices of the newspaper "*El Nacional*." The so-called *Círculos Bolivarianos* had been created with direct support from the State. These people were protesting "*El Nacional's*" editorial leaning and were hurling dangerous objects. They also threatened the journalists who leant out of the windows and took photographs of the protestors;
- c) consequently, on January 11, 2002, the Commission asked the State to adopt precautionary measures with respect to the journalists, employees, and executives working at the newspaper "*El Nacional*";
- d) on January 16, 2002, the State, responding to that request for precautionary measures, reported that it had conveyed the relevant information to the Minister of the Interior and Justice, to the Attorney General's Office and to the Ombudsman, to have the facts investigated and the competent agencies instructed to provide the protection required to ensure the security and safety of the journalists and others

working at those media outlets. On January 18, 2002, the Ombudsman reported that the proceeding was at the stage during which evidence was gathered. The Attorney General of Venezuela reported that Prosecutor 79 from the Office of the Public Prosecutor for the Metropolitan Caracas Judicial Circuit had taken steps toward opening the case and assigning three prosecutors to "advance and conduct the preparatory phase of the investigations";

- e) on May 30, 2002, Venezuela submitted "updated information on the adoption of precautionary measures on behalf of *"El Nacional"* newspaper. In that communication the State reported that on January 18, 2002, the president of *"El Nacional"* was summoned to consider what measures to implement on his behalf. It stated further than on February 4, 2002, "a Metropolitan Police patrol car was detailed to watch the interior and exterior of the newspaper's offices, and the Director's private residence";
- f) on July 10, 2002, the Commission decided to extend the precautionary measures for another six months to protect the safety and physical integrity of *"El Nacional's"* journalists, workers and executives, since the aggression and harassment of the protected mass media that triggered the original request for precautionary measures persisted still. As of the present, those measures are still in effect;
- g) on March 22, 2002, the Commission requested that the State adopt other precautionary measures to protect journalists Ibéyise Pacheco, Patricia Poleo, Marianela Salazar and Marta Colomina; the last of these four is currently under the protection of the provisional measures ordered by the Court;
- h) on March 27, 2002, the State presented a report to the Commission concerning the requested measures of protection, wherein reference was made to the various communications sent to the various State agencies, and a communication from the Attorney General of Venezuela wherein he reported on the measures taken in the investigation into the facts;
- i) in its second report, filed on April 2, 2002, the State asserted, *inter alia*, that "Venezuelan society's exercise of freedom of expression and its right to information [...] ha[d] never been more respected than [...] in the last three years." In that report, the State cited a news item that appeared in *"El Nacional"* on "March 20, 2003 [*sic*]," which reported that a judge had granted "a precautionary measure for the protection of journalist Ibéyise Pacheco and the staff at the newspaper *Así es la Noticia*." It also stated that "the number of agents assigned to each journalist, the *mod[i] operandi*, the schedules of the police escort and all the logistical details [would] be worked out shortly with the Metropolitan Police authorities." Despite the foregoing, the State did not report any progress in the investigations conducted by the Office of the Attorney General into the facts denounced; nor did the State send an official report corroborating the news item in question. Furthermore, although the State claimed that precautionary measures had been ordered to protect Ibéyise Pacheco and the staff of the

newspaper "*Así es la Noticia*", on June 27, 2003, an attempt was made on the life of journalist Martha Colomina;

- j) on June 3, 2004, the National Electoral Council announced that sufficient signatures had been gathered to hold a presidential recall referendum; that announcement set off a series of violent disturbances at various locations in downtown Caracas;
 - k) that afternoon, a group of persons identified as members of the "*Movimiento Bolivariano 200*" and of the so-called "*Círculos Bolivarianos*" headed for the main offices of "*El Nacional*" and "*Así es la Noticia*", which are adjacent to each other. Having seized a truck carrying bottles of beer, these people descended in front of the "*El Nacional*" building and hurled bottles at the building's façade, destroying almost all its windows. Later, they set fire to a vehicle parked in front of the two newspapers, which spread to another vehicle;
 - l) the protestors also broke the windows on a Miranda government van. After forcing the driver out, they pushed the vehicle in the direction of the parking lot of the newspaper "*Así es la Noticia*," knocking down the gate and throwing rocks that damaged a number of vehicles owned by the newspaper and its employees;
 - m) summarizing, the damage caused to the "*El Nacional*" newspaper involved broken windows and the burning of a newspaper delivery truck. The damage caused to the newspaper "*Así es la Noticia*" included the destruction of computers, microwave ovens, telephones, furniture and windows, the destruction of 12 vehicles owned by journalists, and a fire to the newspaper's paper recycling deposit; and
 - n) during these attacks, staff were trapped inside the newspapers' offices, completely defenseless as the authorities did not respond. Although the National Guard's presence was requested to control law and order, some three hours passed before it arrived.
3. The Commission's observations to the effect that, taken together, the facts alleged constitute a situation of extreme gravity and urgency that could cause irreparable harm to the people working at "*El Nacional*" and "*Así es la Noticia*" newspapers, which is sufficient justification for the Court to order provisional measures under Article 63(2) of the Convention. The Commission further alleges that the State did not comply with the precautionary measures that the Commission ordered in this case.

Given the above, the Commission requested that the Court call upon Venezuela to:

- a. [a]dopt the measures necessary to provide perimeter protection to the offices of the "*El Nacional*" and "*Así es la Noticia*" newspapers, to safeguard and protect the lives and person of the persons on the premises of those mass media outlets[;]

b. [a]dopt the measures necessary to ensure to the persons working for the “*El Nacional*” and “*Así es la Noticia*” newspapers the full exercise of their right to freedom of expression[; and]

c. [c]onduct a thorough investigation of the events that transpired at the offices of “*El Nacional*” and “*Así es la Noticia*” newspapers so that the competent bodies might identify and prosecute the perpetrators and instigators of those events, and sentence them to the punishments that the law prescribes.

4. The June 29, 2004 note from the Secretariat of the Court where, acting on instructions from the Court *en banc*, it asked the State to submit, by July 2, 2004 at the latest, its comments on the Commission’s request for provisional measures and any information it might have regarding the situation of “extreme gravity and urgency” and the possibility that “irreparable harm” might be done to persons on the premises of or working at the main offices of the “*El Nacional*” and “*Así es la Noticia*” newspapers.

5. The State’s failure to respond to the Secretariat’s June 29, 2004 note.

CONSIDERING:

1. That the State ratified the American Convention on August 9, 1977, and, pursuant to Article 62 of the Convention, recognized the contentious jurisdiction of the Court on June 24, 1981.

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 matters as it deems pertinent in matters it has under consideration and, with respect to a case not yet submitted to it, it may act at the request of the Commission.”

3. That article 25(1) of the Court’s Rules of Procedure 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 establishes the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction.

5. That in general, under domestic legal systems (internal procedural law), the purpose of provisional measure is to protect the rights of the parties in dispute, ensuring that enforcement of the judgment on the merits is not prejudiced by their actions *pendente lite*.

6. That under the International Law of Human Rights, urgent provisional measures serve a further purpose, which is to protect fundamental human rights, thereby avoiding irreparable harm to persons.

7. That the information presented by the Commission in this case reveals *prima facie* a threat to the life and person of Sergio Dahbar, Ramón José Medina, Enrique Otero, Rafael Lastra, Ibéyise Pacheco, Patricia Poleo, Marianela Salazar, Henry

Delgado, Alex Delgado and Edgar López, and the other persons on the premises of the “*El Nacional*” and “*Así es la Noticia*” newspapers or in any way associated with those newspapers’ journalism business. On a number of occasions, when protective measures were called for, this Court has ordered provisional measures applying the standard of *prima facie* assessment of a case and on the basis of presumptive evidence.¹

8. That the Inter-American Commission has adopted precautionary measures that have not produced the needed effects; to the contrary, recent events indicate that the persons named in the preceding paragraph, as well as others at the facilities of the “*El Nacional*” and “*Así es la Noticia*” newspapers or associated with their journalism business are in grave peril.

9. That freedom of expression, recognized in Article 13 of the Convention, is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.²

10. That the mass media are one of the vehicles through which freedom of expression is exercised, and the conditions under which the media operate must enable freedom of expression.

11. That the Court has ordered protection for a number of people in grave danger who, although not previously named, are readily identifiable. In the instant case, the Court believes the correct course of action is to order provisional measures on behalf of all persons on the premises of the offices of the “*El Nacional*” and “*Así es la Noticia*” or those associated with those journalism businesses.

12. That to effectively ensure the rights recognized in the American Convention, the State Party has an obligation, *erga omnes*, to protect all persons subject to its jurisdiction. As this Court has previously held, this means that this general obligation applies not only with respect to the power of the State but also with respect to actions by third parties.³ The Court observes that given the characteristics of the instant case, provisional measures are needed to protect the above-named persons (*supra* ‘*Considering*’ 7), and anyone else on the premises of the “*El Nacional*” and

¹ Cf., *inter alia*, *Case of the Gómez-Paquiyaui Brothers*. Provisional Measures. Order of the Inter-American Court of Human Rights of May 7, 2004, ‘*Considering*’ sixteen; *Case of Bámaca-Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 20, 2003, ‘*Considering*’ twelve; and *Case of Marta Colomina and Liliana Velásquez*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 8, 2003, ‘*Considering*’ five.

² Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No.5, para. 70.

³ Cf. *Case of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 6, 2003, ‘*Considering*’ eleven; and *Case of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2002, ‘*Considering*’ eleven.

"*Así es la Noticia*" newspapers or associated with their journalistic activities, in light of the provisions of the American Convention.

13. That the case to which the Commission's request refers is not now pending with the Court for a decision on the merits; therefore, adoption of provisional measures does not imply a decision on the merits of the dispute between the petitioners and the State.⁴ In adopting provisional measures, the Court is merely guaranteeing that it is able to faithfully discharge its mandate under the Convention for cases of extreme gravity and urgency that require measures of protection to avoid irreparable harm to persons.

14. That as of July 6, 2004, the date of issuance of the present Order, the State has still not replied to the Secretariat's note of June 29, 2004 (*supra* 'Having Seen' 5).

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority under Article 63(2) of the American Convention on Human Rights and Article 25 of its own Rules of Procedure,

RESOLVES:

1. To call upon the State to adopt forthwith the measures necessary to safeguard and protect the life, person and freedom of expression of Sergio Dahbar, Ramón José Medina, Enrique Otero, Rafael Lastra, Ibéyise Pacheco, Patricia Poleo, Marianela Salazar, Henry Delgado, Alex Delgado and Edgar López, and any other persons at the facilities of the "*El Nacional*" and the "*Así es la Noticia*" newspapers or anyone associated with the operation of those newspapers.

2. To call upon the State to adopt forthwith the necessary measures to provide perimeter protection at the offices of the "*El Nacional*" and "*Así es la Noticia*" newspapers.

3. To call upon the State to investigate the facts that necessitated adoption of these provisional measures in order to identify those responsible and impose the appropriate punishments.

4. To call upon the State to allow the beneficiaries of these measures to participate in their planning and implementation and, in general, to keep them informed of the progress made with execution of the measures ordered by the Inter-American Court of Human Rights.

⁴ Cf., *inter alia*, *Case of Lysias Fleury*. Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, 'Considering' eight; *Case of Lysias Fleury*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 7, 2003, 'Considering' ten; *Case of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 6, 2003, 'Considering' twelve; and *Case of Urso Branco Prison*. Provisional Measures. Order of the Inter-American Court of Human Rights of June 18, 2002, 'Considering' ten.

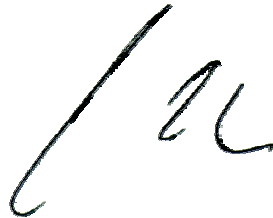
5. To call upon the State, within ten days of the date of notification of this Order, to report to the Inter-American Court of Human Rights on the provisional measures it has adopted in compliance therewith.

6. To call upon the Inter-American Commission on Human Rights to forward the present Order to the beneficiaries of these measures and to inform them that they may present their comments within the five-day period following the date of notification of the State's report.

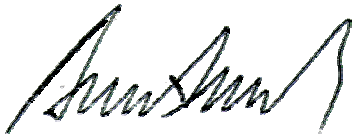
7. To call upon the Inter-American Commission on Human Rights to submit its comments within seven days of the date of notification of the State's report.

8. To call upon the State, subsequent to its first communication (*supra* operative paragraph 5), to continue to file reports with the Inter-American Court of Human Rights every two months on the provisional measures adopted; to call upon the beneficiaries of these measures to submit their comments within one month of the date of notification of the State's reports; and to call upon the Inter-American Commission on Human Rights to present its observations on the State's reports within six weeks of their receipt.

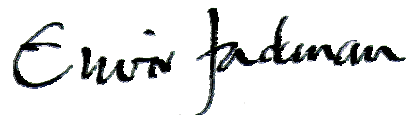
Judge Sergio García Ramírez informed the Court of his Concurring Opinion, which is affixed to this Order of the Court.



Sergio García-Ramírez
President



Alirio Abreu-Burelli



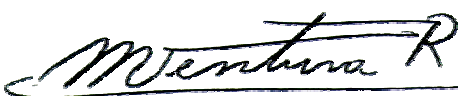
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Cecilia Medina-Quiroga



Manuel E. Ventura-Robles

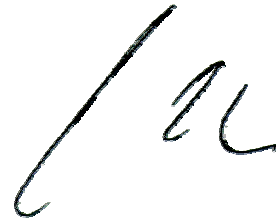


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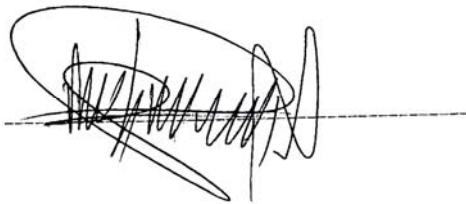
A handwritten signature in black ink, featuring a large, stylized 'S' and 'A' with multiple vertical strokes in between, all contained within a horizontal oval shape.

Pablo Saavedra-Alessandri
Secretary

So ordered,

A handwritten signature in black ink, consisting of a large, sweeping 'S' followed by a stylized 'G' and 'R'.

Sergio García-Ramírez
President

A handwritten signature in black ink, identical to the one at the top of the page, featuring a large, stylized 'S' and 'A' with multiple vertical strokes in between, all contained within a horizontal oval shape.

Pablo Saavedra-Alessandri
Secretary