

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF OCTOBER 24, 2012**

**PROVISIONAL MEASURES
WITH REGARD TO THE REPUBLIC OF HONDURAS**

MATTER OF JOSÉ LUÍS GALDÁMEZ ÁLVAREZ *ET AL.*

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) on February 22, 2011, in which, *inter alia*, it required the State to:

1. [...] maintain the measures already implemented and adopt immediately any complementary measures necessary to protect the life and the personal liberty and integrity of José Luís Galdámez Álvarez and his companion, Wendy Orellana Molina, and his sons Pedro Luís, José Luís, Marlon Josué, Ramón Israel, and his two minor children, all with the surname Galdámez.

2. [...] take all pertinent measures to ensure that the measures of protection ratified in this Order are planned and implemented with the participation of the beneficiaries of the measures or their representatives, so that the said measures are provided diligently and effectively, bearing in mind the special needs for protection of the beneficiaries and, in general, to keep them informed of progress in the execution of the measures.
[...]

2. The briefs of May 10, 2011, and January 9, March 30 and June 26, 2012, in which the Republic of Honduras presented reports on the implementation of the provisional measures.

3. The briefs of June 14, November 18 and December 1, 2011, and February 15, April 10 and August 1, 2012, in which the representatives of the beneficiaries of the provisional measures (hereinafter “the representatives”) submitted their observations on the State’s briefs and provided information on new incidents that had occurred to the detriment of the beneficiaries.

4. The briefs of July 6, 2011, and March 19, June 1 and August 14, 2012, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) presented its observations on the implementation of the measures.

CONSIDERING THAT:

1. The Republic of Honduras ratified the American Convention on Human Rights on September 8, 1977, and in keeping with Article 62 thereof, accepted the compulsory jurisdiction of the Court on September 9, 1981.

2. Article 63(2) of the American Convention establishes 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, in turn, regulated by Article 27 of the Court’s Rules of Procedure, because a basic principle of State responsibility, supported by international case law, requires the States to comply with their international treaty obligations in good faith (*pacta sunt servanda*).¹

3. Under international human rights law, provisional measures are not merely preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons.² Thus, Article 63(2) of the Convention requires that three conditions must be met concurrently for the Court to order provisional measures: (a) “extreme gravity”; (b) “urgency,” and (c) the need “to avoid irreparable damage to persons.” These three conditions must be present in any situation in which the Court’s intervention is requested, and must persist for the Court to maintain the protection ordered. If one of these conditions is no longer valid, the Court must assess the pertinence of continuing the protection ordered.³

4. Based on its jurisdiction, in the context of provisional measures the Court must only consider those arguments that are strictly and directly related to the extreme gravity, urgency and need to prevent irreparable damage to persons. Thus, in order to decide whether to maintain provisional measures in effect the Court must analyze whether the situation that led to their adoption persists, or whether new equally grave and urgent circumstances require maintaining them. Any other matter may only be submitted to the consideration of the Court through the corresponding contentious cases.⁴

a) Implementation of the provisional measures

5. Regarding the implementation of the provisional measures, the State informed the Court, among other aspects, that:

a) On December 2, 2011 a meeting was held to monitor the provisional measures, during which a proposal was made to the beneficiary to substitute the police escorts assigned to him by officials of the “COBRAS special unit [...] who [were] better trained, which would increase the protection service for the beneficiary and his direct family.” In addition, the State agreed to monitor the protection measures every two months, or whenever the

¹ 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, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional measures with regard to Dominican Republic. Order of the Inter-American Court of Human Rights of September 7, 2012, second and third considering paragraph.

² *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, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, *supra* note 1, fifth considering paragraph.

³ Cf. *Case of Carpio Nicolle*. Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, *supra* note 1, sixth considering paragraph.

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, and *matter of the Andean Region Penitentiary Center*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of September 6, 2012, fifth considering paragraph.

circumstances warranted this, or when the beneficiaries or their representatives requested this in writing with sufficient advance notice.

- b) On February 26, 2012, a meeting was held in which it was agreed that, through the Police Deputy Commissioner, the necessary corrections would be made to comply with the agreed patrols. Furthermore, during this meeting it was agreed to draw up a list with the contact details of the parties who could provide assistance, so that the beneficiaries could communicate with the police authorities in a case of an emergency or complaint and an immediate response would be provided;
- c) At the meeting of June 11, 2012, it was suggested to the beneficiary that a police post could be set up in front of his house. The State also expressed its willingness to explore options to cover the expenses of the police agents who are safeguarding the life and integrity of Mr. Galdámez and his family, so that he does not have to pay for them, and
- d) Regarding the investigation into the events that led to the adoption of the provisional measures, the State has identified those possibly responsible and the location of the vehicle they used when committing the criminal act. In addition, as part of the investigation, an identification parade was held with the beneficiary; however, he did not recognize any of the suspects.

6. In different communications, the representatives of the beneficiaries indicated, *inter alia*, that:

- a) There has been an evident lack of progress in the investigations and the provisional measures have only been complied with partially, because "there is only an official in front [of the beneficiary's house], [and] the patrols that were agreed on are carried out sporadically";
- b) The State's commitment to hold monthly meetings and to give priority to the investigation of the acts that led to the adoption of the provisional measures have not been complied with satisfactorily, and
- c) At times, the police agent assigned to protect Mr. Galdámez and his family leaves to perform other tasks, and no one is sent to substitute him; thus the beneficiaries are left without protection. In addition, the police escort for the journey between the Mr. Galdámez's home and work is not permanent, but rather sporadic. Furthermore, although the police agents have been changed, this has not led to an improvement in the existing irregularities, because the agents do not respect the agreed timetable.

7. For its part, the Inter-American Commission indicated in its observations that:

- a) The State has not presented new information regarding the progress of the investigations, and it has not referred to the facts that occurred in 2009, or to the recent facts reported by the representatives. In addition, even though the beneficiaries have not been able to identify those presumably responsible, this should not constitute an obstacle for the investigations to continue;
- b) Despite the agreements reached at the meeting held in February 2012, the measures of protection are still not being implemented regularly, "which is important in light of the persistence of incidents that could jeopardize the life and integrity of the beneficiaries," and

- c) The representatives of the beneficiaries continue to report certain shortcomings in the execution of the measures of protection; therefore, the Commission is awaiting information on the implementation of the new provisional measures, such as the construction of a police post, the payment of the expenses of food for the police agents, and the date of a new monitoring meeting.

8. The Court appreciates the State's willingness to implement the measures ordered by the Court and to correct the shortcomings in their implementation indicated by the representatives (*supra* sixth considering paragraph). In relation to the specific protection measures concerning which the parties disagree as regards compliance: in other words, the irregularity in the escort of the beneficiaries, and possible delays in the investigation of the threats, the Court emphasizes the need to ensure the active participation of the State and the representatives to achieve the effective implementation of the measures; consequently, it is essential that the representatives and beneficiaries collaborate with the authorities, for example, by filing the corresponding complaints. In addition, the State must ensure the necessary conditions to comply with its express commitment to provide the protection measures agreed between the parties and to correct immediately the shortcomings that the State itself recognizes.⁵

b) Information regarding the situation of risk of the beneficiaries

9. The representatives indicated that, since the provisional measures were granted, new incidents have taken place that have affected the beneficiaries' safety, namely:

- a) Towards the end of February 2011, Mr. Galdámez saw a vehicle that was following him when he was going to his place of work. When he arrived, the vehicle parked; the beneficiary therefore called the police, which sent four agents to investigate the incident. The police agents told Mr. Galdámez that the occupants of the car were members of the National Criminal Investigation Directorate (DNIC); nevertheless, they did not explain why these people were following him or what they were investigating;
- b) On April 15, 2011, several unknown persons fired shots at the wall of Mr. Galdámez's house and then fled. This occurred in the presence of the police agent who was watching the house;
- c) On April 18, 2011, unknown persons fired shots at the third floor of the beneficiary's house, breaking the window. The Commander of the San Miguel Police Station was called immediately. To date there is no information on any progress in the investigation of this incident;
- d) On May 26, 2011 the police agent who was watching the beneficiary's home advised him that, on the same day at approximately 2 p.m., four heavily armed individuals had arrived, pounded on the gate and asked for him, indicating that they were from the National Criminal Investigation Directorate. As a result of steps taken by the beneficiary himself, the DNIC spokesperson told him that no one from that entity was looking for him;

⁵ Cf. *Matter of Fernández Ortega et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of February 20, 2012, ninth considering paragraph, and *Matter of Gladys Lanza Ochoa.* Provisional measures with regard to Honduras. Order of the Inter-American Court of Human Rights of June 28, 2012, fourteenth considering paragraph.

- e) On October 1, 2011, after leaving his house, Mr. Galdámez realized that a car was following him. On his way to the radio station where he works he was able to evade this vehicle. The police agent responsible for his safety also observed the incident, but did not call a patrol to provide protection to him. The beneficiary opted to denounce the fact during the radio show for which he works;
- f) On October 16, 2011, the beneficiary's son was stopped by a police car with six policemen. One of them hit him in the face and asked him for his belongings, threatening him with a gun. Mr. Galdámez arrived with a police agent; however no investigation was carried out to clarify the reason for the detention or the attack suffered;
- g) On October 22, 2011, Mr. Galdámez's car was broken into, and some implements used in his work as a journalist were stolen. This was reported to the police; however, here again no steps were taken;
- h) On November 1, 2011, the beneficiary received two telephone calls in which he received death threats. On November 14, he received a text message with the same threatening characteristics;
- i) On November 24, 2011, when she reached her home, the beneficiary Wendy Orellana Molina realized that two men with their faces covered were approaching her on a motorcycle without license plates; however, seconds later they disappeared rapidly. The police agent assigned to watch over the Galdámez family did not notice this incident because he was watching television on the porch outside the house;
- j) On December 28, 2011, Wendy Orellana Molina was intercepted by two men driving a truck. They made her get out of the car, took her belongings, used profane language when addressing her, and left;
- k) On February 10, 2012, Mr. Galdámez received a text messages and telephone calls with death threats. Also, on February 13, 14, 16 and 17, 2012, he was followed after leaving work. Mr. Galdámez expressed his concern, indicating that he felt "at death's door, [he did] not know what to do with so many threats and, here, the police [were] the ones that [were] killing people and [...] committing contract killings," and
- l) Mr. Galdámez was obliged to take measures of protection for his family; they included Ms. Orellana Molina travelling temporarily to the United States, and one son going to Spain and another to the United States in order to get away from the threats to their father.

10. The Inter-American Commission noted "the possible participation of State agents in the events described by the representatives and the lack of information from the State that it had taken serious measures to determine reliably those responsible for these incidents and their links with the State's security agencies." In addition, it observed "with concern that, despite the beneficiaries' situation of risk and the new incidents reported by the representatives, the beneficiaries do not have protection personnel on a permanent basis, [and] the police presence in these circumstances is insufficient."

11. The State did not refer specifically to the threats and the incidents reported by the representatives in which members of the family were followed.

12. The Court finds it opportune to reiterate that provisional measures are exceptional in nature; they are ordered based on the need for protection and, once ordered, must be maintained provided the Court considers that the basic requirements persist of extreme gravity and urgency, and the prevention of irreparable damage to the rights of the persons protected by them.⁶

13. Based on the above, the Court considers that the information provided by the Commission, the representatives and the State reveals that the beneficiaries of these provisional measures continue in a situation of extreme gravity and urgency, because their life and personal integrity are threatened and at grave risk. Consequently, the Court finds it necessary to continue to protect the said persons by means of provisional measures.

14. Owing to the situation of risk of the beneficiaries of these measures, the Court assesses positively the State's attitude of adopting, among other provisions, the pertinent measures to correct the shortcomings in the implementation of the provisional measures, by holding working meetings, offering safety infrastructure, and facilitating direct lines of communication with the police in order to provide the beneficiaries with adequate safety measures (*supra* fifth considering paragraph).

15. Consequently, the State must continue taking the pertinent measures to ensure that the provisional measures required in this Order are planned and implemented with the participation of the beneficiaries of the measures or their representatives, so that the said measures are provided diligently and effectively, assessing the specific risk of each beneficiary in order to determine the precise means of protection. The participation of the State and the beneficiaries or their representatives is essential in order to coordinate the implementation of the provisional measures in this matter adequately.

16. Therefore, the State must submit precise detailed information on the provisional measures implemented in favor of each beneficiary so that the Court may assess them. Specifically, the State must submit: (a) the list of agreements reached with the beneficiaries or their representatives; (b) the timetable for implementation of the agreements; (c) the protection measures adopted, and (d) the measures to monitor the said implementation.

17. For its part, the Court finds it necessary that the representatives present their observations on the State's report within the time frame established in the operative paragraphs of this Order, which should include an updated assessment of the situation of risk of the beneficiaries of these measures.

18. Regarding the domestic investigations, the Court reiterates that the State has the special obligation to guarantee the rights of persons in a situation of risk, and must promote the investigations required to clarify the facts, followed by the legal consequences established in the pertinent law.⁷ However, the analysis of the effectiveness of these

⁶ Cf. *Case of the Constitutional Court*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of March 14, 2011, third considering paragraph, and *Case of Gladys Lanza Ochoa*, *supra* note 5, twentieth considering paragraph.

⁷ Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering three, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, *supra* note 1, forty-second considering paragraph.

investigations and procedures regarding the incidents that resulted in the provisional measured corresponds to the examination of the merits of the case.⁸

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. That the State must continue to adopt immediately all necessary measures to protect the life and personal integrity of Jose Luis Galdámez Álvarez, his companion, Wendy Orellana Molina, and his sons Pedro Luis, José Luis, Marlon Josué, Ramón Israel and his two minor children, all with the surname Galdámez, taking into consideration their specific situation of risk, in keeping with the provisions of considering paragraphs 13 to 18 of this Order.

2. That the State must take all necessary measures to ensure that the measures of protection required in this Order are planned and implemented with the participation of the beneficiaries of the measures or their representatives, so that the said measures are provided diligently and effectively and that, in general, it keep them informed of any progress in their implementation, in keeping with the provisions of considering paragraphs 8 to 15 of this Order.

3. That the State must forward a report to the Inter-American Court of Human Rights within one month of notification of this Order, on the provisional measures adopted in keeping with considering paragraph 16 of this Order and that, subsequently, it must continue to forward a report on the implementation of the provisional measures every three months.

4. That the representatives of the beneficiaries must submit their observations on the State's reports within two weeks of notification of the State's reports indicated in the preceding operative paragraph and in keeping with considering paragraph 17 of this Order. In addition, the Inter-American Commission on Human Rights must submit its observations on the above-mentioned briefs of the State and the representatives within two weeks of receiving the respective brief with the representatives' observations.

5. That the Secretariat must notify this Order to the State of Honduras, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries.

⁸ 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, and *Matter of Gladys Lanza Ochoa*, *supra* note 5, twenty-seventh considering paragraph.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

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