

**Order of the
Inter-American Court of Human Rights
of July 11th, 2007*
Provisional Measures regarding Mexico

Matter of Gallardo Rodríguez**

HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of December 18, 2001, which requested the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal") to adopt provisional measures:

to prevent irreparable damage to the life, and the physical, mental and moral integrity of General José Francisco Gallardo Rodríguez, and also to his freedom of expression related to his life. The provisional measures are also requested to prevent irreparable damage to the psychological and mental integrity of his wife, Leticia Enríquez, and his children, Marco Vinicio, Francisco José, Alejandro and Jessica Gallardo Enríquez. With regard to his daughter, Jessica Gallardo, who is eight years old, the Court has been asked to adopt special protective measures to assure her personal integrity. Finally, the purpose of these measures is to prevent irreparable damages to Mexican society's freedom to receive information.

In said request, the Commission stated that Mr. José Francisco Gallardo Rodríguez (hereinafter "the beneficiary") was "detained *de facto*" in the "Nezahualcoyotl-Bordo Xochiaca" Social Rehabilitation Center in the State of Mexico. That in this detention center the beneficiary was subjected to numerous acts of harassment, and that the "*de facto* detention" prevented him from freely expressing his version of the pattern of harassment to which he had been subjected, and from freely presenting his criticism of facts that he believes constitute acts of abuse of power within the Mexican army.

2. The Ruling of the President of the Court (hereinafter "the President") of December 20, 2001, in which he decided, *inter alia*, to:

Require that the State adopt, without delay, all measures necessary to protect the life and personal integrity of the General José Francisco Gallardo Rodríguez.

3. The brief of February 8, 2002, through which the United Mexican States (hereinafter "the State" or "Mexico") noted that "the President of the Republic, [L]icentiate Vicente Fox Quesada, issued an agreement addressed to the National Defense Secretariat whereby he granted a reduction in the sentences that Mr.

* Through communication of July 9, 2007, the Judge Sergio García Ramírez, of Mexican nationality, handed over the Presidency of the Inter-American Court for the hearing of the present matter to the Vice-President of the Court, Judge Cecilia Medina Quiroga, pursuant to Article 4(3) of the Rules of Procedure of the Court. Likewise, the Judge García Ramírez excused himself from intervening in these proceedings, pursuant to Article 19 of the Statutes of the Court.

Gallardo Rodríguez was serving” and that in “compliance with the mentioned Presidential Agreement [...] the General Office of Military Justice requested that the penitentiary authorities of the State of Mexico release José Francisco Gallardo”, who had already been released and “ha[d] 24-hour protection offered by a security detail composed of members of the Secretariat of Public Security and the Preventive Federal Police.”

4. The brief of February 12, 2002, in which the Commission informed the Court of the release of the beneficiary and noted, with regard to its previous requests, that

[t]he circumstances that gave rise to [those requests] have varied substantially[; that] it t[ook] into account, in particular, the release of General Gallardo and the security measures [that the Special Immediate Reaction Unit of the Office of the Attorney General of Mexico Federal District, [was] granting to Mr. José Francisco Gallardo Rodríguez and his next of kin,] and decide[d] to withdraw its request for provisional measures in this case.

5. The President’s Ruling of February 14, 2002, in which he decided to, *inter alia*:

1. Maintain the urgent measures adopted through the Ruling on December 20, 2001, “[r]equir[ing] that the State adopt, without delay, all measures necessary to protect the life and personal integrity of General José Francisco Gallardo Rodríguez.”

6. The Resolution of the Inter-American Court of February 18, 2002, in which it decided to, *inter alia*:

1. Ratify the Rulings of the President of the Inter-American Court of Human Rights of December 20, 2001 and February 14, 2002, in all their terms, and therefore require that the State maintain all measures necessary to protect the life and personal integrity of the General José Francisco Gallardo Rodríguez [...].

7. The thirty-three reports presented by the State to the Tribunal regarding the implementation of the provisional measures ordered by the latter.

8. The observations of the Inter-American Commission and those of the representatives of the beneficiary of the provisional measures (hereinafter “the representatives”) to the reports sent by the State (*supra*, Having Seen paragraph 7).

CONSIDERING:

1. That Mexico ratified the American Convention on Human Rights (hereinafter “the Convention”) on March 24, 1981, and, pursuant to Article 62 of the Convention, accepted the contentious jurisdiction of the Inter-American Court of Human Rights on December 16, 1998.

2. That on February 18, 2002, upon adopting provisional measures in this matter (*supra*, Having Seen paragraph 6), the Court considered that the record of events presented revealed a *prima facie* situation of urgency and grave danger for the life and personal integrity of Mr. José Francisco Gallardo Rodríguez.

3. That pursuant to the statement of the representatives in their communication of February 4, 2004, Mr. Gallardo Rodríguez was the victim “of threats against him” by telephone communications on the 15th and 19th of January 2004, and that, pursuant to the information provided by the representatives at a later time, the investigation

regarding those facts has allegedly been unsuccessful.

4. That from the reports presented by the State (*supra*, Having Seen paragraph 7) and the observations of the Commission and the Representatives (*supra*, Having Seen paragraph 8), it can be concluded that since January 2004 there have not been any more threats recorded against the beneficiary, or any other act that may put his life or personal integrity in danger. That is, Mr. Gallardo Rodríguez's situation has remained stable for more than three years.

5. That on June 20th and July 24th, 2006 the representatives and the Commission were asked to "inform the Tribunal if the extreme gravity and urgency that motivated the adoption of the present provisional measures persist, so as to avoid irreparable damages to the beneficiary."

6. That through their communications of July 28th and September 22nd, 2006 the representatives indicated that the "situation of extreme gravity and urgency persists, because the investigation that has been opened ha[d] been unsuccessful to date, and thus the expectation to eliminate or neutralize the risk would only be satisfied with the finding of those responsible."

7. That the Commission observed on August 7, 2006 that "there have not been threats or acts against the integrity of the beneficiary, and this has been the situation for several years [...]. However, the continued validity of the provisional measures has not resulted in a complete and conclusive investigation with regard to the threats against the beneficiary."

8. That the State has complied with its duty to inform the Tribunal periodically of the efforts made to implement the present measures.

9. That in the last five years the State has adopted measures to protect Mr. Gallardo Rodríguez, among them: security detail provided by federal authorities, an official vehicle with two agents at the beneficiary's home, and a protection service consisting of police patrolling and 24-hour emergency telephone numbers.

10. That provisional measures have an exceptional nature, they are issued as a function of the needs of protection and, once ordered, they must be maintained as long as the Court considers that the basic requirements of extreme gravity and urgency, as well as the prevention of irreparable damages to the rights of the people protected by these measures continue to exist.¹

11. That a reasonable period of time has passed without Mr. Gallardo Rodríguez being subject to threats or intimidations, and that the statements of the representatives (*supra*, Having Seen paragraph 6) regarding the fact that there are still judicial processes currently pending, do not constitute circumstances of extreme gravity

¹ Cfr. *Matter of Ramírez Hinojosa et al.* Provisional Measures, Order of the Inter-American Court of Human Rights of February 7, 2006, considering clause number seven; *Matter of Liliana Ortega et al.* Provisional Measures, considering clause number eleven; and *Case of Caballero Delgado and Santana.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, considering clause number twelve.

and urgency that call for the continuance of the current provisional measures.²

12. That the above does not prevent the State from continuing with the corresponding investigations within the domestic jurisdiction to identify and, if it is the case, to punish those responsible for the threats suffered by Mr. Gallardo Rodríguez.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the powers granted to it by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To discontinue and acknowledge the conclusion of the provisional measures ordered by the Inter-American Court of Human Rights on February 18, 2002, in favor of Mr. José Francisco Gallardo Rodríguez.

2. To call upon the Secretariat of the Court to notify the Inter-American Commission of Human Rights, the representatives of Mr. Gallardo Rodríguez, and the State of the present Order.

Cecilia Medina Quiroga
President

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

² Order in the Case of the *Constitutional Court*, Provisional Measures. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering Clause number four.

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary