

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF AUGUST 30, 2011**

**PROVISIONAL MEASURES
WITH REGARD TO THE DOMINICAN REPUBLIC**

CASE OF GONZALEZ MEDINA ET AL.

HAVING SEEN:

1. The brief of the representatives of the alleged victims¹ (hereinafter "the representatives") of August 9, 2011, and its attachment, in which they submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") a request for provisional measures, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and 27 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), for the Dominican Republic (hereinafter "the State" or "Dominican Republic") to adopt measures "in order to protect the life and personal integrity of Mario José Martín Suriel Núñez."

2. The alleged facts on which the request for provisional measures filed by the representatives are based, namely:

- a) On August 7, 2011, "at around 11 p.m. Mario José Martín Suriel Núñez was driving home in his car" when, at a certain point on Independencia Avenue "a young man with a suspicious attitude stepped in front of the vehicle with the clear intention of making Mr. Suriel Núñez stop. Mr. Suriel Núñez stopped, but when he observed that there was a group of around five (5) men with the youth, all of whom were rushing towards him aggressively and who appeared to be carrying knives, Mr. Suriel Núñez started driving off in order to leave that place and try to find a police station. However, he was immediately followed by a dark brown "*jipeta*" (an SUV) all along Independencia Avenue, Padre Billini Street, 19 de Marzo Street, and then George Washington Avenue up to the floating bridge. Mr. Suriel Núñez was able to cross the bridge and escape the car that was following him, but owing to the high speed at which he was driving in order to avoid being attacked, when approaching Villa Duarte his vehicle overturned and ended up upside down, with the roof facing the ground and the tires in the air. Mr. Suriel Núñez was able to get out of the vehicle through a window and was helped by those living nearby." Mr. Suriel Nuñez's "vehicle was declared a total loss, because the damages cannot be repaired." The representative attached photographs of the vehicle;
- b) "Subsequently, neighbors of Mr. Suriel Núñez's home stated that several individuals in a *jipeta*, with the same description as the one that followed him,

* Judge Rhadys Abreu Blondet, a Dominican national, recused herself from hearing the *case of Gonzalez Medina et al.* and, thus, the present request for provisional measures, pursuant to Articles 19(2) of the Statutes and 19(1) of the Court's Rules of Procedure. Judge Leonardo A. Franco informed the Court that, for reasons beyond his control, he could not be present during the deliberation and signature of this order.

¹ The alleged victims in the instant case appointed as their representatives the lawyers Tomás Castro Monegro and Rafael Domínguez, from the civil society organization "*Comisión de la Verdad*," and Viviana Krsticevic, Ariela Peralta, Francisco Quintana, and Annette Martínez, from the Center for Justice and International Law (CEJIL).

had stopped several times in front of the home of Mr. Suriel Núñez and his family;"

- c) "Since the incident, Mr. Suriel Núñez has received several calls to his mobile telephone but nobody answers on the other end of the line and, in this context, it causes him great anxiety and uncertainty as regards his vulnerability";
- d) "Mr. Suriel Núñez's current physical condition is stable; however, the threat suffered [...] has caused him great tension, anxiety, and fear in view of the possibility that a new threat to him may arise," and
- e) "In view of the threats and harassment, as well as the accident suffered by Mr. Suriel Núñez, he and his wife decided to change their place of residence."

3. The representatives' arguments to justify their request for provisional measures, including:

- a) "The harassment and threats suffered by Mario José Martin Suriel Núñez constitute a situation of extreme gravity and urgency, due to the certain and imminent risk of irreparable damage to his life and personal integrity, owing to his participation in the [instant] case [...], which is currently being heard by the Court." According to Article 63(2) of the American Convention this situation "merits the adoption by the Inter-American Court of the provisional measures necessary to avoid irreparable damage to the witness Mario José Martin Suriel Núñez";
- b) Mr. Suriel Núñez is a founding member of the civil society organization *Comisión de la Verdad* [Truth Commission], created by a group of Dominican citizens who, following the alleged forced disappearance of Mr. Gonzalez Medina, organized themselves in order "to demand justice";
- c) "The *Comisión de la Verdad*, together with the CEJIL and the lawyer Tomas Castro Monegro, have taken numerous measures at both the domestic and the international level in order to discover the whereabouts of Narciso Gonzalez, to obtain an investigation into the circumstances of his disappearance, and to bring those responsible to justice." The measures taken by Mr. Suriel Núñez include investigations and the gathering of evidence to discover the whereabouts of Mr. Gonzalez Medina and the filing of complaints with the police and the courts. "Mr. Suriel Núñez has been one of the main spokespersons for the *Comisión de la Verdad*, preparing and publishing press releases, offering interviews to the press, the television and radio, and even requesting meetings with senior State officials";
- d) "Over the last 17 years, the family of Narciso Gonzalez, the members of the *Comisión de la Verdad* and the lawyer Tomas Castro Monegro have been victims of harassment and threats, and have been followed." On November 8, 1996, the Inter-American Commission asked the Dominican Republic to implement precautionary measures to guarantee the life and personal integrity of "Virgilio Almánzar, Tomas Castro and Luz Altagracia Ramirez de Gonzalez, as well as other witnesses in the case, due to the threats and harassment to which they were subject after the case had been brought before the inter-American system;"
- e) When testifying before the Court during the public hearing on June 28, 2011, Mr. Suriel Núñez stated that he had been threatened in the past, and that the Police had been informed of these threats, but had not investigated them;
- f) Mr. Suriel Núñez has participated in the international proceedings in the *case of Gonzalez Medina et al.* both as the representative of the *Comisión de la Verdad* and as a witness of the facts. Mr. Suriel Núñez testified both before the Inter-American Commission and at the public hearing held before the Court on June 28, 2011. His last statement contains "aspects" that are "sensitive" and fundamental for determining the State's international responsibility, "which could also be considered a threat by people linked to the forced disappearance

of Narciso González.” The representatives specifically indicated some of the alleged aspects of this testimony;

- g) “Besides his testimony in the case of Narciso González, Mario José Martin Suriel Núñez is not participating actively in any other activities that could put him at risk or that represent a threat to specific groups,” and
- h) They consider that there are serious presumptions that link the testimony offered by Mr. Suriel Núñez and his activities as a member of the *Comisión de la Verdad* to the recent events that jeopardized his personal integrity. “Owing to the risk that these events could occur again, that the harassment could increase, and in order to prevent irreparable damage to the life and personal integrity of the witness Mario José Suriel Núñez, they request that the Inter-American Court adopt provisional measures.”

4. The representatives’ request that the Court, based on Article 63(2) of the American Convention and Article 27 of the Rules of Procedure, require the State to take the following measures:

FIRST. Adopt the measures necessary to prevent any situation that may put at risk the life, personal integrity, and freedom of expression of Mario José Suriel Núñez.

SECOND. Open an exhaustive investigation in order to determine the authors of the said threats, and to punish those responsible according to the law.

THIRD. Grant protection to Mario José Martin Suriel Núñez.

FOURTH. Take all the appropriate steps to ensure that the protection measures are planned and implemented with the participation of the beneficiaries of the measures or their representatives and, in general, keep them informed of any progress in their execution.

FIFTH. Report on the application of the measures adopted in favor of Mario José Martin Suriel Núñez as soon as possible.

Any other measure of protection considered necessary to guarantee the life and integrity of the beneficiaries.

5. The note of the Secretariat of the Court of August 10, 2011, in which, on the instructions of the President of the Court and pursuant to the provisions of Article 27(5) of the Court’s Rules of Procedure, the State was asked to present any observations it considered pertinent with regard to the said request for provisional measures, by August 18, 2011, at the latest, and was informed that the time limit could not be extended. The State did not present the observations requested.

6. The representatives’ brief of August 15, 2011, and its attachment, in which they presented complementary information to the said request for provisional measures. The representatives stated that, on August 12, 2011, the non-governmental organization known as the “National Human Rights Commission” had “submitted an urgent request for a protection measure in favor of Mario José Martin Suriel Núñez to the National Police Headquarters.” They indicated that, in this request “it denounced the threats and harassment against Mr. Suriel Núñez last August 7, 2011,” and asked that these acts be investigated and that measures of protection be adopted in favor of Mr. Suriel Núñez. The representatives presented a copy of the said request that has a stamp acknowledging receipt by the “National Police Headquarters.”

7. The note of the Secretariat of the Court of August 18, 2011, in which, on the instructions of the President of the Court and pursuant to the provisions of Article 27(5) of the Court’s Rules of Procedure, the State was granted a non-extendible time limit until August 22, 2011, to present additional observations on the complementary information forwarded by the representatives (*supra* sixth having seen paragraph), if it deemed pertinent. The State did not present observations.

CONSIDERING THAT:

1. The Dominican Republic has been a State Party to the American Convention since April 19, 1978, and, pursuant to Article 62 thereof, it accepted the Court's compulsory jurisdiction on March 25, 1999.

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 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.

3. According to Article 27 of the Court's Rules of Procedure:²

1. 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.
[...]

3. In contentious cases before the Court, victims or alleged victims, or their representatives, may submit to it a request for provisional measures, which must be related to the subject matter of the case.
[...]

5. The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested.
[...]

4. The provision established in Article 63(2) of the Convention confers an obligatory nature on the State's adoption of the provisional measures ordered by this Court, because a basic principle of international law, supported by international case law, has indicated that States shall comply with their convention obligations in good faith (*pacta sunt servanda*).³

5. Under international human rights law, provisional measures are not only preventive, in the sense that they preserve a juridical situation, but they are also fundamentally 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 to prevent irreparable damage to persons are met. Thus, provisional measures become a real jurisdictional guarantee of a preventive nature.⁴

6. Article 63(2) of the Convention requires that, for the Court to order provisional measures three conditions must be met: (i) "extreme gravity"; (ii) "urgency," and (iii) that their purpose is to "avoid irreparable damage to persons." These three conditions

² The Court's Rules of Procedure approved on November 24, 2009, during its eighty-fifth regular session held from November 16 to 28, 2009, and in force as of January 1, 2010.

³ 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; *Matter of the El Rodeo I and El Rodeo II Capital Judicial Detention Center.* Provisional measures with regard to Venezuela. Order of the Court of July 6, 2011, third considering paragraph, and *Matter of the Monagas Judicial Detention Center ("La Pica").* Provisional measures with regard to Venezuela. Order of the Court of July 6, 2011, third considering paragraph.

⁴ Cf. *Case of the "La Nación" Newspaper.* Provisional measures with regard to Costa Rica. Order of the Court of September 7, 2001, fourth considering paragraph; *Case of Rosendo Cantú et al.* Provisional measures with regard to Mexico. Order of the Court of July 1, 2011, fourth considering paragraph, and *Case of Kawas Fernández.* Provisional measures with regard to Honduras. Order of the Court of July 5, 2011, fifth considering paragraph.

coexist and must be present in any situation in which the Court's intervention is requested.⁵

7. It is the State's responsibility to adopt safety measures to protect all persons subject to its jurisdiction. This obligation becomes even more evident with regard to individuals who are involved in proceedings before the American Convention's supervisory organs,⁶ especially if they are victims or alleged victims, their next of kin, or individuals who have testified before the Court in a contentious case.

8. Mr. Suriel Núñez testified before this Court on June 28, 2011, at the public hearing held in the instant case. In his testimony, Mr. Suriel Núñez stated, *inter alia*, that he had been threatened in the past for his activities as a member of the *Comisión de la Verdad*. He indicated that he had received numerous telephone calls, that on one occasion he was "detained in the city by the police," and that the threats were not investigated.

9. From the information provided by the representatives and not opposed by the State, it can be concluded that on the night of August 7, 2011, while Mr. Suriel Núñez was on his way home, his vehicle was followed by another vehicle, in a way that placed his life and personal integrity at great risk (*supra* having seen paragraph 2(a)). As stated by the representatives and denounced before the National Police, neighbors of Mr. Suriel Núñez had observed that several individuals in a vehicle matching the description of the one used for the said pursuit had stopped in front of the home of Mr. Suriel Núñez and his family on several occasions (*supra* having seen paragraph 2(b)). The National Police had also been advised that, following these events, Mr. Suriel Núñez had received several telephone calls during which no one spoke on the other end of the line and, in this context, it caused him great anxiety and uncertainty (*supra* having seen paragraphs 2(c) and 6). The representatives have affirmed that there are significant presumptions that link the testimony offered by Mr. Suriel Núñez and his activities as a member of the *Comisión de la Verdad* to the recent acts against his personal integrity. They also indicated that there is no other reason that could explain the occurrence of this alleged harassment and threats.

10. In relation to the representatives' arguments concerning the adoption of precautionary measures during the processing of this case before the Inter-American Commission (*supra* having seen paragraph 2(d)), the Court has verified, in the information published on the Commission's website,⁷ that on November 8, 1996, the Commission requested the Dominican Republic to adopt "urgent precautionary measures to guarantee the life and personal integrity of Virgilio Almánzar, Tomás Castro and Luz Altagracias Ramírez de González, and other witnesses in a case submitted to the consideration of the IACHR as No. 11,324." It also verified that "[t]he State of the Dominican Republic responded on November 27, 1996, indicating that it had asked the National Police to conduct an investigation into the threats, and also to organize an escort for each of these persons." The Court considers that this proves the existence of a precedent of threats against one of the alleged victims and of witnesses in relation to this case before the inter-American system. The Court finds sufficient reasons to presume

⁵ Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Court of July 6, 2009, fourteenth considering paragraph; *Matter of the El Rodeo I and El Rodeo II Capital Judicial Detention Center*, *supra* note 3, fourth considering paragraph, and *Matter of the Monagas Judicial Detention Center ("La Pica")*, *supra* note 3, fourth considering paragraph.

⁶ Cf. *Matter of Gallardo Rodríguez*. Provisional measures with regard to Mexico. Order of the Court of February 18, 2002, sixth considering paragraph; *Case of the 19 Tradesmen*. Provisional measures with regard to Colombia. Order of the President of the Court of February 6, 2007, seventh considering paragraph; and *Case of Gutiérrez Soler*. Provisional measures with regard to Colombia. Order of the Court of July 9, 2009, fifth considering paragraph.

⁷ Information available [in Spanish] on the Inter-American Commission's website: <http://www.cidh.oas.org/medidas/1996.sp.htm>.

that the acts of harassment and threat against Mr. Suriel Núñez could be related to his participation in the instant case.

11. In addition, the Court takes into consideration the additional information provided by the representatives (*supra* having seen paragraph 6) that indicates that a few days after the alleged harassment and threats against Mr. Suriel Núñez, a complaint was filed before the National Police, requesting an investigation into what had happened and the adoption of protective measures. The Dominican Republic did not present observations regarding the information provided by the representatives (*supra* having seen paragraph 7); thus this Court is not aware of the procedure and the response provided by the state authorities to this complaint. Furthermore, the Court has not been informed of any measure of protection adopted by any state authority or body in favor of Mr. Suriel Núñez.

12. Additionally, the Court notes and takes into account for the effects of adopting this order, that based on Article 27(5) of its Rules of Procedure the President of the Court asked the State to forward any observations it considered pertinent regarding the request for measures and the complementary information forwarded by the representatives and that, to date, the Court has not received these observations (*supra* having seen paragraphs 5 to 7). The State did not answer this request to submit observations in this regard, and it is pertinent to recall that it is essential that the State respond and provide information when the organs of the inter-American human rights system request it, so that the regional protection mechanism can operate effectively.⁸ This lack of response by the State allows the Court to presume the existence of the situation of risk alleged by the representatives, as well as the absence of measures by the State.

13. The *prima facie* standard of appraisal in a matter, and the application of presumptions faced with the needs for protection, have led the Court or its President to order measures on different occasions.⁹ Furthermore, in matter such as the present, the extreme gravity of the threat must be evaluated in function of the specific context, since it is evident that if fundamental rights such as life and physical integrity are jeopardized by this type of threat, in principle, a context exists that warrants considering the adoption of protective measures.¹⁰

14. Based on the foregoing considerations, the Court finds that the magnitude of the harassment suffered by Mr. Suriel Núñez, which caused him to crash his vehicle, the alleged surveillance observed by his neighbors, the anonymous calls to his telephone, and the consequent decision to leave his home reveal *prima facie* a situation of extreme gravity and urgency, which justifies the adoption of provisional measures of protection to avoid irreparable damage to his personal integrity and life.

⁸ Cf. *Matter of A.J. et al.* Provisional measures with regard to Haiti. Order of the Court of September 21, 2009, ninth considering paragraph; *Matter of Guerrero Larez*. Provisional measures with regard to Venezuela. Order of the Court of November 17, 2009, twelfth considering paragraph, and *Matter of the Aragua Detention Center "Tocorón Prison."* Provisional measures with regard to Venezuela. Order of the President of the Court of November 1, 2010, twelfth considering paragraph.

⁹ Cf. *inter alia*, *Matter of the Monagas Judicial Detention Center ("La Pica")*. Provisional measures with regard to Venezuela. Order of the President of the Court of January 13, 2006, sixteenth considering paragraph; *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Court of May 15, 2011, seventeenth considering paragraph; and *Matter of the Ciudad Bolívar Judicial Detention Center "Vista Hermosa Prison."* Provisional measures with regard to Venezuela. Order of the Court of May 15, 2011, seventeenth considering paragraph.

¹⁰ Cf. *Matter of the El Rodeo I and El Rodeo II Capital Detention Center*, *supra* note 3, seventeenth considering paragraph; *Matter of Mery Naranjo et al.*, Provisional measures with regard to Colombia. Order of the Court of March 4, 2011, eleventh considering paragraph, and *Matter of Alvarado Reyes et al.*, *supra* note 9, sixteenth considering paragraph.

Therefore, the Inter-American Court considers that the State must adopt the necessary measures to protect the life and personal integrity of Mr. Suriel Núñez.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority granted to it by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Court's Rules of Procedure,

DECIDES:

1. To require the State to adopt immediately all necessary measures to protect the life and personal integrity of Mario José Martín Suriel Núñez, taking into consideration the situation and the specific circumstances of the case.
2. To require the State to take all appropriate measures to ensure that the measures of protection determined in this order be planned and implemented with the participation of the beneficiary or his representatives, so that the said measures are provided diligently and effectively and, in general, to keep them informed of any progress in their execution.
3. To require the State to report to the Inter-American Court of Human Rights on October 7, 2011, at the latest, on the obligation established in the first operative paragraph of this order.
4. To require the State, also, to inform the Inter-American Court of Human Rights every two months, as of October 7, 2011, about the provisional measures adopted in accordance with this decision.
5. To request the representatives of the beneficiary and the Inter-American Commission to present to the Inter-American Court of Human Rights, within one and two weeks, respectively, any observations they considered pertinent on the report mentioned in the third operative paragraph of this order.
6. To request the representatives of the beneficiary and the Inter-American Commission on Human Rights to present their observations on the bi-monthly reports indicated in the fourth operative paragraph within four and six weeks, respectively, of notification of the said reports.
7. To order the Secretariat to notify this order to the Dominican Republic, the representatives of the beneficiary, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary