

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 4, 2006**

REQUEST FOR PROVISIONAL MEASURES SUBMITTED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REGARDING THE BOLIVARIAN REPUBLIC OF VENEZUELA

MATTER OF GUERRERO-GALLUCCI AND MARTÍNEZ-BARRIOS

HAVING SEEN:

1. The brief of June 20, 2006 and its Appendixes, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "The Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal"), in accordance with Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures aimed at having the State of the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") adopt such measures as may be necessary to "protect Ms. María del Rosario Guerrero-Gallucci and Mr. Adolfo Segundo Martínez-Barrios from [allegedly] imminent violations of their rights to life and personal integrity."

2. The alleged facts on which the request for provisional measures submitted by the Commission is founded, to wit, that:

- a. Ms. Guerrero-Gallucci is a member of a human rights group of Guárico State, in which the state police allegedly perpetrated more than 100 executions in the last five years. Ms. Guerrero publicly denounced the police and other state agents and representatives of said state for their alleged participation in some of these executions;
- b. Ms. Guerrero-Gallucci has been an alleged victim of extortion by police officers, which prompted her to file a criminal action. Furthermore, she denounced having been a victim of attacks and threats since 2001;
- c. Ms. Guerrero-Gallucci is a witness in a case pending before a criminal court against the Director of *Las Verdades de Miguel* (Miguel's Truths) weekly magazine, which was allegedly brought by the Governor of Guárico State for defamation and slander;

* Judge Oliver Jackman informed the Court that, for reasons beyond his control, he would not be able to attend the Seventy-first Regular Session; therefore, he did not take part in the deliberation and signing of this Order.

- d. Ms. Guerrero-Gallucci and her husband, Mr. Martínez-Barrios, were granted measures of protection at a domestic level on different occasions since 2004, which were allegedly ineffective to protect their lives and personal integrity;
- e. by reason of the threats and facts against Ms. Guerrero-Gallucci, and at the request of the Public Prosecutor's Office, a Control Court of Valle de Pascua ordered measures of protection, custody and police stationing. Nevertheless, said measures expired and were not extended, which caused Ms. Guerrero-Gallucci to request, on April 19, 2006, "the urgent reinstatement of said measures, since she feared for her life" because she was going to attend a hearing as an alleged victim in a trial for extortion allegedly involving governor's escorts, and "in light of the persistent attacks and insults pronounced by him against herself and her husband in a weekly radio programme;"
- f. on April 21, 2006, Ms. Guerrero-Gallucci and her husband suffered an attempt on their lives. They both received several bullet wounds. According to the interview given by Ms. Guerrero-Gallucci at the *Cuerpo de Investigaciones Científicas Penales y Criminalísticas de la Sub-Delegación Zaraza* (Criminal, Criminological and Scientific Investigation Body of the Zaraza Sub-Delegation) of Guárico State, the person who shot at them had identified himself as a state police officer, and as he left, he had told them that what had happened was "a little gift" from the governor. When they tried to run away, Ms. Guerrero-Gallucci and her husband were chased after and she received yet another bullet wound. Finally, they managed to arrive at a medical center;
- g. after that, Ms. Guerrero-Gallucci and Mr. Martínez-Barrios received medical care and subsequently left Guárico State. Now they are staying in different places;
- h. on April 22, 2006, a day after the attempt on Ms. Guerrero-Gallucci and her husband, the Control Court of Valle de la Pascua notified the Precinct Police Chief of the *Cuerpo de Investigaciones Científicas Penales y Criminalísticas de la Sub-Delegación Zaraza* (Criminal, Criminological and Scientific Investigation Body of the Zaraza Sub-Delegation) of Guárico State that it had agreed to extend the measures of protection for a renewable 90-day term "provided that it be justified to do so;"
- i. the attempt on the lives of Ms. Guerrero-Gallucci and Mr. Martínez Barrios was denounced to the corresponding judicial authorities; and
- j. judicial proceedings were instituted against the police officer who had presumably participated in the attempt. The Public Prosecutor's Office charged the police officer with aggravated attempted homicide and conspiracy. Allegedly, to date, no progress has been made in the criminal proceedings to establish the responsibilities and punishment of the perpetrators and instigators of the attempt.

3. The arguments of the Commission to justify its request for provisional measures, wherein it stated that:

- a. the facts against Ms. Guerrero-Gallucci foreshadow acts against her life and personal integrity, due to her denunciation activities (*supra Having Seen* clauses No. 2(b) and (c));
- b. even though the State has adopted measures of protection in favor of the beneficiaries, according to the information furnished by the petitioners, the protection provided is not sufficiently adequate to effectively protect beneficiaries' lives. Threats became true "in the form of extremely grave acts against physical integrity aimed at deprivation of life;"
- c. it ratified its deep concern for the alleged hostility and threats against the life and physical integrity of human rights defenders in Venezuela; and
- d. the special impact of aggressions against the right to life of human rights defenders lies in that their damaging effect reaches much beyond the direct victims.

4. The request of the Inter-American Commission so that the Court, based on Article 63(2) of the American Convention, may call upon the State to:

- a. adopt, forthwith, whatever measures are necessary to safeguard beneficiaries' lives and personal integrity, in keeping with the requirements and means described herein;
- b. allow the beneficiaries and their representatives to participate in the planning and implementation of the measures of protection;
- c. conduct serious, complete and prompt investigations into the acts of aggression against the beneficiaries, identify those responsible and impose on them the corresponding punishment, as a prevention mechanism to avoid the recurrence of threats or the occurrence of irreparable damage to the beneficiaries; and
- d. report, as soon as possible, on any progress made in and the outcome of the investigations undertaken to identify and punish those responsible for the facts giving rise to the request.

5. The note of Secretariat of the Court (hereinafter "the Secretariat") of June 21, 2006, wherein, as instructed by the President, in consultation with the full Court, the State was granted a term ending on June 23, 2006 to submit its comments on the request for provisional measures submitted by the Commission (*supra Having Seen* clause No. 1).

6. The brief of June 28, 2006, wherein the State submitted the comments that had been requested through instructions of the President of the Court. In said brief, the State expressed, *inter alia*, that:

- a. on April 22, 2006, Control Court No. 1 ordered a measure of protection for a 90-day renewable term in favor of Ms. Guerrero- Gallucci and Mr. Martínez-Barrios. Officers from the Office of the *Cuerpo de Investigaciones Científicas Penales y Criminalísticas de la Sub-*

Delegación Zaraza (Criminal, Criminological and Scientific Investigation Body of the Zaraza Sub-Delegation) of Guárico State, as well as from the *Guardia Nacional del Comando Regional No. 02 Destacamento No. 28* (National Guard of Regional Military Unit No. 2, Detachment No. 28) of Valle de la Pascua (Guárico State) "put [said measure] into practice immediately;"

- b. on April 23, 2006, Ms. Guerrero-Gallucci was taken from Clínica Los Llanos to the airport of the city of Valle de la Pascua under custody of officers of the Investigation Body and National Guard. From there, an airplane took her to Caracas, where she stayed at a clinic under custody of an investigation agent;
- c. on April 25, 2006, Mr. Martínez-Barrios was dismissed from the medical center and expressed that he would travel to the city of Barcelona, Anzoátegui State, "where he would stay with his next of kin, and gave no exact address." Likewise, he stated that "he would keep in touch with the office of the Investigation Body via telephone;"
- d. on April 30, 2006, the investigation agent who was guarding Ms. Guerrero-Gallucci informed that she had been dismissed and that she had expressed that "she would travel to a next of kin's house in the city of Caracas, and gave no address of this place, so that the whereabouts of these people remain unknown";
- e. on June 22, 2006, a communication was forwarded to the Solicitor General of the Republic to inform them of the request for provisional measures, "urging them to take such steps as may be necessary to safeguard the guarantees and security" of Ms. Guerrero-Gallucci and Mr. Martínez-Barrios; and
- f. it will start holding meetings with the petitioners to "establish actions more favorable to the defense and guarantee of human rights [...] as of [...] June 26," 2006.

CONSIDERING:

- 1. That Venezuela has been a State Party to the American Convention since August 9, 1977, and, pursuant to Article 62 thereof, recognized the adjudicatory jurisdiction of the Court on June 24, 1981.
- 2. That Article 63(2) of the American Convention provides that, in "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons", the Court, with respect to cases not yet submitted to it, and at the request of the Commission, may adopt such provisional measures as it deems pertinent.
- 3. That, in relation to this matter, Article 25 of the Rules of Procedure provides that:

[...]

- 2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

6. The beneficiaries of provisional measures or urgent measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission on Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives.

[...]

4. That Article 1(1) of the Convention establishes the general duty of States Parties to respect the rights and freedoms recognized therein and to ensure all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That provisional measures are of an exceptional nature, that they are granted on the basis of the needs of protection and that, once ordered, they must be maintained so long as the Court considers that there continue to exist the basic requirements of extreme gravity and urgency and prevention of irreparable damage to the rights of the persons protected by said measures.¹

6. That, according to the information furnished by the Commission, Ms. María del Rosario Guerrero-Gallucci, a member of the human rights group known as "*Soldados de Justicia, Paz y Libertad en Cruzada contra la Impunidad*" (Soldiers of Justice, Peace and Liberty Crusading against Impunity), has publicly denounced the police and state authorities of Guárico State for their alleged participation in some of the executions allegedly perpetrated by police officers of said state and is a witness in a criminal case brought by the Governor of said state against the director of a weekly magazine. She claims that she has been the target of attacks and threats since 2001, by reason of which a Control Court of Valle de Pascua ordered measures of protection, custody and police stationing, which expired at an uncertain date prior to April 19, 2006. Subsequently, on April 21, 2006, Ms. Guerrero-Gallucci and her husband, Mr. Adolfo Segundo Martínez-Barrios, were attacked with a firearm by at least one individual, who allegedly identified himself as a police officer of Guárico State. Each of them received three bullet wounds in different parts of their bodies, which caused them grievous harm. After this, they managed to escape from their aggressors, received medical care and abandoned Guárico State.

7. That the State is particularly obliged to protect those who work in non-governmental organizations, as well as other groups or individuals who work to defend human rights, for their work constitutes a positive and supplementary contribution to the endeavors undertaken by the State in its role of guarantor of the rights of the people living within its jurisdiction.²

8. That on April 19, 2006, Ms. Guerrero requested the Superior Prosecutor of the Public Prosecutor's Office of Guárico State to urgently reinstate the measures of protection, since she feared for her life, because she was going to attend a hearing as an alleged victim in a trial for extortion allegedly involving police officers, and in

¹ Cfr. *Matter of Ramírez-Hinostroza et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering clause No. 7.

² Cfr. *Matter of the Forensic Anthropology Foundation*. Urgent Measures. Order of the President of the Inter-American Court of Human Rights of April 21, 2006, Considering clause No. 9, and *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 9, 2006, Considering clause No. 14.

light of the persistent attacks and insults pronounced by the Governor of Guárico State against herself and her husband in a weekly radio programme. Nevertheless, the order to extend the measures of protection granted by the Criminal Control Court of Valle de la Pascua in favor of the aforementioned persons and their stepson, Adolfredo Segundo Martínez-Salazar, was not notified to the *Cuerpo de Investigaciones Científicas, Penales y Criminalísticas* (Criminal, Criminological and Scientific Investigation Body) until April 22, that is to say, three days after the request and one day after the attempt suffered by Ms. Guerrero-Gallucci and her husband.

9. That the attempt on Ms. Guerrero-Gallucci's and Mr. Martínez-Barrios' lives is a fact that unveils the extremely grave situation these people face and the need to protect them from potential irreparable damage.

10. That this request for provisional measures was submitted to the Commission on May 30, 2006 by several non-governmental organizations, which expanded on said request on June 13, 2006. The Inter-American Commission registered said request under number MP3/06 and on June 20, 2006 submitted it to this Tribunal. On the other hand, even though the Court values what the Commission and the State informed (*supra* Having Seen clauses No. 2(h) and 6(a)) regarding the fact that, as of April 22, 2006, Control Court No. 1 ordered "a measure of protection for a 90-day renewable term in favor of the above mentioned victims", the State itself informed that since said persons were dismissed from the hospital or clinic where they were staying "[their] whereabouts remain unknown", which shows that the measures of protection ordered at a domestic level are not being implemented.

11. That, in addition to the foregoing, the measures of protection that may be ordered at a domestic level by state authorities differ, in their nature, scope and effects, from the provisional measures of protection ordered pursuant to the American Convention. As has been repeatedly stated, in International Human Rights Law, provisional measures are not only of a precautionary nature, in the sense that they preserve a legal situation, but also, and mainly, of a protective nature, in the sense that they safeguard human rights, to the extent that they seek to avoid irreparable damage to persons. Provided the basic requirements of extreme gravity and urgency and the need to prevent irreparable damage to persons are met, provisional measures become a true judicial guarantee of a preventive nature.³ Thus, although it should be duly valued, the fact that measures of protection were ordered at a domestic level does not limit the authority of this Tribunal to order provisional measures pursuant to the American Convention, nor does it empower the State to stop adopting such other measures as may be necessary to comply with Court's orders.

12. That the State must apply all possible means to avoid irreparable damage to Ms. Guerrero-Gallucci and Mr. Martínez Barrios. In particular, given the circumstances in which the facts allegedly took place, it is essential for measures of protection to be implemented in common agreement with the beneficiaries or their

³ Cf. *Matter of the Forensic Anthropology Foundation*, *supra* note 1, Considering clause No. 5; *Matter of the Mendoza Prisons*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering clause No. 4, and *Matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison)*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering clause No. 5.

representatives, by properly trained and qualified personnel not belonging to the security bodies that have been denounced by the beneficiary.

13. That the background information furnished by the Commission and the information submitted by the State regarding the facts involving Ms. Guerrero-Gallucci and Mr. Martínez-Barrios prove, *prima facie*, that there exists a situation of extreme gravity and urgency as regards their rights to life and personal integrity. The standard of *prima facie* appreciation of a case and the application of presumptions in light of the need for protection have led the Court to order provisional measures on several occasions. Consequently, this Tribunal deems it necessary to protect the aforementioned persons with provisional measures, pursuant to the provisions of the American Convention.

14. That the adoption of provisional measures does not imply a decision on the merits of the dispute between the petitioners and the State. By adopting provisional measures, the Court is only exercising its mandate under the Convention, in cases of extreme gravity and urgency that require measures of protection to avoid irreparable damage to persons.⁴

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To call upon the State to adopt, forthwith, such provisional measures as may be necessary to protect the rights to life and personal integrity of Ms. María del Rosario Guerrero-Gallucci and Mr. Adolfo Segundo Martínez-Barrios, taking into account the gravity of the situation and the special risk conditions.
2. To call upon the State to investigate the facts that prompted the adoption of these provisional measures and, if appropriate, to identify those responsible and impose on them the corresponding punishment.
3. To call upon the State to perform all relevant actions so that the measures of protection ordered herein are planned and implemented with the participation of the beneficiaries thereof or their representatives, in such a manner that said measures are executed diligently and effectively by properly trained and qualified personnel not belonging to the security bodies that have been denounced by the beneficiary. Additionally, the State must keep the beneficiaries informed of any progress made in the implementation of the aforementioned measures.

⁴ Cf. *Matter of the Forensic Anthropology Foundation*, *supra* note 1, Considering clause No. 5; *Matter of the Mendoza Prisons*, *supra* note 3, Considering clause No. 4, and *Matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison)*, *supra* note 3, Considering clause No. 5.

4. To call upon the State to inform the Inter-American Court of Human Rights, within seven days from the notification of this Order, about the measures it may have adopted in compliance therewith.

5. To call upon the beneficiaries of said measures or their representatives to submit to the Inter-American Court of Human Rights, within five days from the notification of the State's report, any comments they deem relevant.

6. To call upon the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights, within seven days from the notification of the State's report, any comments it deems relevant.

7. To call upon the State, after submitting the report included in operative paragraph four, to continue to inform the Inter-American Court of Human Rights, on a bimonthly basis, about adopted provisional measures, and to call upon the beneficiaries thereof or their representatives, as well as the Inter-American Commission on Human Rights, to submit their comments within four and six weeks respectively from the notification of State's reports.

8. To request the Secretariat of the Court to give notice of this Order to the State, the Inter-American Commission and the representatives of the beneficiaries of these measures.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary