

**Order of the
Inter-American Court of Human Rights
of November 29, 2007
Provisional Measures regarding 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 for 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"), pursuant to 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, so that the State of the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") adopt the measures necessary to "protect from [alleged] imminent violations the rights to life and to humane treatment of Ms. María del Rosario Guerrero-Gallucci and of Mr Adolfo Segundo Martínez-Barrios."

2. The Order by the Inter-American Court dated July 4, 2006, whereby it decided:

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. 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 call upon 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.

To call upon the State to adopt henceforth the provisional measures necessary to protect the rights the rights to life and to humane treatment of Ms. María del Rosario Guerrero-Gallucci and of Mr Adolfo Segundo Martínez-Barrios, bearing in mind the gravity of the situation and the special risk conditions.

3. The reports number one through eight submitted by the State between July 12, 2006 and October 19, 2007, the briefs by the State of February 14 and 28, and May 7 and 20 and June 5, 2007 and the observations by the Commission and the representatives to such reports and briefs, as well as the brief filed by the representatives on November 27, 2007.

4. The notices whereby the Secretariat, following instructions by the President, requested the State to forward in its reports certain specific information regarding implementation of the measures ordered.

CONSIDERING:

1. That Venezuela is a State Party to the American Convention since August 9, 1977 and that, under Article 62 of the Convention, it accepted the contentious 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 may, in matters not yet submitted to it, at the request of the Commission, adopt such provisional measures as it deems pertinent.

3. That relating to such matter, Article 25 of the Rules of Procedure establishes that:

[...]

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

[...]

6. The beneficiaries of urgent measures or provisional 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 undertaking by States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights.

5. That in their brief dated November 27, 2007, the representatives informed that “Mr. Adolfo Segundo Martínez-Barrios, of his own free will, being of sound mind and with full knowledge of the rights available to him, expressed his intention to give up the police protection he had enjoyed up to that moment. Such decision was due, as he himself put on the record, to the distrust he feels towards the police bodies of the Venezuelan State, all of it stemming from the detention order issued by the Tribunal Tercero de Primera Instancia del Circuito Judicial del Estado Guárico (Guárico State Judicial Circuit Court of the First Instance Number Three) [...] As the petitioners see it, the right to life and humane treatment of the beneficiaries continue to be in serious risk [and t]hey regret the decision adopted by Mr. Adolfo Segundo Martínez-Barrios... .” In the statement signed by the aforementioned beneficiary, he expressed that “ being of fully sound mind and having full knowledge of the rights available to me, I express my decision, taken on my own free will, of not continuing under the police protection granted pursuant to the Order issued by the Inter-American Court of Human Rights on July 4, 2006; in such sense, I waive the police protection I have hitherto enjoyed because I distrust the police bodies of the Venezuelan State. I likewise declare to have been informed by staff working with the PROVEA Non-Governmental Organization about the risks and consequences this may have as far as my security and that of my family are concerned and even so I confirm my full disposition not to maintain police protection for safeguarding my life.” The representatives and the State have informed the Court on the contradictions in which Mr. Martínez-Barrios has incurred in his statements, with reference to the police protection granted; the facts that prompted such provisional measures; and his accusations against Ms. María del Rosario Guerrero-Gallucci.

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

7. That based on the statement and the request by Mr. Martínez-Barrios in his capacity as the beneficiary of the instant measures (*supra*, Considering paragraph 6), the Court deems it fit to lift the provisional measures concerning the protection of his person.

8. That it is fit to continue analyzing the implementation status of the instant measures with regard to Mrs. María del Rosario Guerrero-Gallucci.

9. That regarding the undertaking to protect, according to the information provided by the parties, the *Juzgado Décimo Tercero de Primera Instancia en Funciones de Control del Circuito Judicial Penal del Área Metropolitana de Caracas* (Caracas Metropolitan Area Criminal Judicial Circuit Court of the First Instance with Control Functions Number Thirteen) and the *Juzgado Quinto de la Primera Instancia en Funciones de Control del Circuito Judicial Penal del Estado de Anzoátegui* (Anzoátegui State Criminal Judicial Circuit Court of the First Instance with Control Functions Number Five), ordered, respectively, the constant protection of the citizen María del

¹ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering paragraph number three; *Case of Raxcacó-Reyes et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of November 21, 2007, Considering paragraph number four; *Matter of Monagas Judicial Confinement Center (“La Pica”)*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering paragraph number seven.

Rosario Guerrero-Gallucci and her family by officials adscribed to the *Dirección General de los Servicios de Inteligencia y Prevención* (Intelligence and Prevention Services Bureau) (hereinafter "DISIP").

10. That the representatives reported that the *Juzgado Décimo Tercero de Primera Instancia en Funciones de Control del Circuito Judicial Penal del Área Metropolitana de Caracas* (Caracas Metropolitan Area Criminal Judicial Circuit Court of the First Instance with Control Functions Number Thirteen) limited displacement of the officials protecting Ms. María del Rosario Guerrero-Gallucci to the Caracas Metropolitan Area, for which reason when going to another State the beneficiary would be protected by guarding officials from the host State. They added that such decision by the jurisdictional organ turns the situation of Ms. Guerrero-Gallucci more difficult, for it does not clarify who shall appoint the officials of the State that will host her and it creates an additional burden, in that a request has to be made and a reply thereto has to be awaited each time she comes and goes. Therefore, it was requested that coordination in the implementation of the provisional measures not be left to a local jurisdictional organ, but rather that the *Agencia del Estado para los Derechos Humanos* (Human Rights Agency of the State) be entrusted with the responsibility to mediate and coordinate planning and implementing the measures, for it is the organ with which the petitioners are in permanent contact. Likewise, they expressed that the beneficiary defrays with their own funds part of the upkeep and the transportation costs of the security officials in charge of protecting them. They consider such outlays must be allocated as travelling expenses to the officials in charge of protection and must be defrayed fully by the State. Regarding the above, the Commission considered it necessary for the State to report on the way how protection to Ms. Guerrero-Gallucci during her displacements was being implemented and the way how the additional burden of requesting and waiting for an answer each time she has to come and go is meant to be removed.

11. That the State informed that Ms. Guerrero-Gallucci "was restricted from leaving the Caracas Metropolitan Area with DISIP officials, it being established that in case said citizen had to go to another State, officials from the host State would be appointed to provide the required security, in order to avoid incurring in expenses on account of it." On such matter, it informed that on June 18, 2007 a meeting was held at the *Oficina de la Agencia del Estado* (State Agency Office) headquarters, in which citizen Guerrero-Gallucci expressed her discontent with the way the measures were being implemented and that, taking her dissatisfaction into account, the situation was reported to the Public Attorney, so that the necessary action could be taken. Thus, in a meeting held on August 13, 2007 with citizen Guerrero-Gallucci, "it was agreed that for the purpose of affording the protection required by her in other states within the country, she should inform ahead of time on the possibility of her leaving the Caracas Metropolitan area, so that coordination could be effected and thus contact be established with the officials that could eventually guard her. Such information mechanism would allow that once the first displacements be effected, direct communication would be created between citizen Guerrero and the officials in charge, with a view to optimize the protection in point and to keep the Court that is seized with the matter updated on the situation." With reference to the alleged expenses the beneficiary would have disbursed, the State expressed it has been pointed out to the officials in charge of guarding her that they should not effect expenses beyond their scope of authority and that "the citizen must coordinate with those in charge of her protection so that they may make the financial provisions necessary in order to adapt to the activities normally carried out by the citizen."

12. That the Court notes that several meetings have been held in order to listen to the opinion of the beneficiary with reference to the manner in which the provisional measures are implemented. Likewise, it values the attitude shown by the State in order to solve Ms. Guerrero-Galucci's dissatisfaction with the protection measures adopted regarding her person. Along such lines, the Tribunal reminds both the State and the beneficiary that the protection measures must be implemented in agreement with the beneficiary or with her representatives and in an effective and diligent manner, for which reason it urges both of them to cooperate so that the agreements reached may be effectively implemented.

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13. That as regards investigation of the facts, the State has informed that the beneficiary appears as the alleged victim in two investigations, one of them related to the alleged blackmail to which she would have been allegedly subjected by the Guárico State Police, currently in the Preparatory stage, with four agents under prosecution. As regards the investigation related to the alleged attempted aggravated homicide to the detriment of the beneficiary, on June and August, 2006 two persons were charged and, after the preliminary hearing was held, the Tribunal seized with the case admitted the charges, indicted the accused and ordered trial proceedings to be instituted. The public trial hearing has not yet been held.

14. On such point, the representatives expressed they were worried about the unreasonable delay in the proceedings, lack of activity and procrastination in the cases where Ms. Guerrero-Gallucci appears as the victim.

15. That the representatives have reported "acts of harassment and intimidation against Ms. María del Rosario Guerrero-Gallucci and her family group" [...] putting her rights to freedom and humane treatment at risk."

16. That from the information provided the Court by the parties, it does not appear that the circumstances having led to adopting the instant provisional measures may have ceased. Pursuant to the Order by the Inter-American Court of Human Rights dated July 4, 2006, the State must, *inter alia* continue to implement the measures it has adopted, and adopt forthwith those that may be necessary to protect the rights to life and to humane treatment of Ms. Guerrero-Gallucci (*supra* Having Seen paragraph one).

17. That the adoption of provisional measures does not imply a decision of the merits of the case between the petitioners and the State. By adopting them, the Court is only exercising its authority under the Convention, for cases of extreme gravity and urgency requiring protection measures to avoid irreparable damage to persons.²

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

² Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of May 27, 1998, Considering paragraph number seven; *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering paragraph number six; and *Matter of Gloria Giralte de García-Prieto et al.* Provisional Measures regarding El Salvador. Order of the Inter-American Court of Human Rights of January 27, 2007, Considering paragraph number six.

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

DECIDES:

1. To reaffirm inasmuch as applicable the provisions in the Order of the Inter-American Court of Human Rights of July 4, 2006.
2. To lift the provisional measures ordered by the Inter-American Court of Human Rights in favor of Mr. Adolfo Segundo Martínez-Barrios, by means of the Order of the Court of July 4, 2006, for the reasons set forth in the Considering paragraphs one to eventh of the instant Order.
3. To reaffirm to the State the provision that it must continue to implement the measures it may have adopted, and that it must adopt forthwith those that may be necessary to protect effectively the rights to life and to humane treatment of Ms. María del Rosario Guerrero-Gallucci pursuant to Order of the Inter-American Court of Human Rights of July 4, 2006.
4. 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 beneficiary thereof or her 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 reported by the beneficiary. Likewise, the State must keep the beneficiary informed of any progress made in the implementation of the aforementioned measures.
5. To request the State to continue reporting precisely and specifically to the Inter-American Court, every two months, as from its last report, on the provisions adopted to comply with all that has been ordered by this Tribunal.
6. To call upon the representatives of the beneficiary and the Inter-American Commission to submit their observations to such reports by the State, within a period of four or six weeks, respectively, as from the date they receive the reports by the State.
7. To call upon the Secretariat of the Court to serve the instant Order upon the State, upon the Inter-American Commission and upon the representatives of the beneficiaries of the instant measures.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary