

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 21, 2011**

**PROVISIONAL MEASURES
REGARDING VENEZUELA**

MATTER OF GUERRERO GALLUCCI

HAVING SEEN:

1. The Orders of the Inter-American Court of Human Rights (hereinafter, the "Court", "the Inter-American Court" or the "Tribunal") of July 4, 2006, and November 29, 2007, issued in relation to the instant provisional measures. In the latter, the Tribunal decided, *inter alia*:

[...]

2. To lift the provisional measures ordered by the Inter-American Court of Human Rights in favor of Mr. Adolfo Segundo Martinez-Barrios, by means of the Order of the Court of July 4, 2006, for the reasons set forth in the Considering paragraphs one to seventh of the [...] 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.

[...]

2. The briefs of May 13 and October 14, 2008; January 15, April 27, June 22 and September 10, 2009; May 26, 2010 and July 20, 2011, whereby the Bolivarian Republic of Venezuela (hereinafter, the "State" or "Venezuela") filed, according to what was requested in operative paragraph five of the Court's Order of November 29, 2007 (*supra* Having Seen 1), its respective reports on the implementation of the instant measures. In this respect, in its report of September 10, 2009 and July 20, 2011, the State asked the Tribunal to lift the provisional measures ordered to the benefit of Maria del Rosario Guerrero Gallucci.

3. The briefs of September 16 and December 1, 2008; February 20, July 8 and October 21, 2009; and January 13, 2010 and August 31, 2011, whereby the representatives of the beneficiary (hereinafter, the "representatives") filed their comments on the State's reports (Having Seen 2).

4. The briefs of December 13, 2007; August 21 and December 31, 2008; March 4, June 17, July 14 and August 25, 2009; and January 8, July 16, 2010 and September 13, 2011, by means of which the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission") filed its comments on the State's reports (*supra* Having Seen 2).

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") since August 9, 1977 and, in accordance with Article 62 thereof, accepted the binding jurisdiction of the Court on June 24, 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".

3. According to the provisions of Article 63(2) of the Convention, the provisional measures ordered by this Tribunal are binding for the State in conformity to a basic principle of international law, as supported by international case law, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*).¹ These orders imply a special duty to protect the beneficiaries of the measures while the measures are in force, and any breach thereto may trigger international State responsibility.²

4. According to Article 63(2) of the Convention, three conditions must be met in order for the Court to be able to order provisional measures: i) "extreme gravity"; ii) "urgency"

¹ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering 6, and *Matter of the Unidad de Internación Socioeducativa*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of September 1, 2011, Considering 3.

² Cf. *Case of Hilaire, Benjamin, Constantine et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, paras. 196 to 200, and *Matter of Natera Balboa*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of May 15, 2011, Considering 3.

and iii) when necessary to avoid “irreparable damage to people”. These three conditions coexist and must be present in every situation where the intervention of the Tribunal is requested. By the same token, the conditions above mentioned must continue to exist in order for the Court to maintain the protection so ordered. If one of them is no longer in force, it falls upon the Tribunal to assess the relevance of continuing with the so-ordered protection.³

5. Given that five years have elapsed since the adoption of the provisional measures in favor of the beneficiary, and in view of the fact that Venezuela has requested, on two occasions, the rescission of the measures (*supra* Having Seen clause 2), the Court deems it appropriate to assess the information presented from the last order issued by the Tribunal, dated November 2007 (Having Seen 1).

6. In this respect, it is convenient to recall that based on its competence, the Court cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons. It is in this manner that, in deciding whether to keep the provisional measures in force, the Tribunal must analyze whether the situation of extreme gravity and urgency that led to their adoption persists, or whether new circumstances, also extremely grave and urgent, warrant keeping them in force. All other issues may be brought to the Court’s attention solely through the procedure for contentious cases.⁴

7. To that end, the Tribunal shall first address the measures of protection implemented by the State and the participation of the beneficiary, the possible acts of harassment reported, and the investigations conducted into the facts that gave rise to these provisional measures. It will then proceed to address the arguments related to the rescission of the present provisional measures and analyze whether in the instant case, the conditions mentioned above still exist.

a) Information on the measures of protection implemented and the participation of the beneficiary

8. The State reported that the 49th Plenipotentiary Prosecutor’s Office has been assigned to guarantee effective compliance with the protective measure ordered to the benefit of Maria del Rosario Guerrero Gallucci on August 17, 2007, by the 13th First Instance Control Court of the Criminal Judicial Circuit of the Metropolitan Area of Caracas. The measures consist of the permanent police patrolling, protection and surveillance by officials working for the Dirección General de los Servicios de Inteligencia y Prevención (Intelligence and Prevention Services Bureau) (hereinafter “DISIP”), which would be provided within the Metropolitan Area of Caracas. According to the State, a series of agreements have been reached with the beneficiary that include notifying the Tribunal 48 hours in advance of any exit from the Metropolitan Area of Caracas, the beneficiary’s avoiding of giving statements to the media, and maintaining a cordial and respectful relationship with the officers assigned to the protection. In addition, it forwarded copies of the “Registry and Supervision of Custody Service” sheets filled out initially by the officials

³ Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering 14, and *Matter of the Unidad de Internación Socioeducativa*, *supra* footnote 1, Considering 5.

⁴ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 29, 1998, Considering 6, and *Matter of the Unidad de Internación Socioeducativa*, *supra* footnote 1, Considering 6.

then working for the Intelligence and Prevention Services Bureau (DISIP) and later on by the Bolivarian Intelligence Service (SEBIN) between March 1, 2008 and May 1, 2011.

9. The representatives expressed their disagreement with the fact that the measures "[are] subjected to the domestic supervision of the 'order' of the Criminal Court," since this would imply "restricting and limiting the liberties and conditions imposed by the [...] Court". Therefore, they requested that the State Human Rights Agency - or, failing that, the Ombudsman - be the body responsible for mediating and implementing the provisional measures granted by the Court. However, "given that it is an autonomous decision of the Venezuelan State to appoint the organ who will administer the execution of the decisions and orders of the Court, they note[d] that it [could] not be any organ or entity that [might] try to establish restrictive conditions or terms different from the ones established by [the] Court". To this end, they asked the Court to either order the State to remedy this irregularity in order for the State to take on the coordination of the provisional measures "together with the competent security bodies and to dispense with the intervention of the judicial body," or else to order the State to broadly and effectively guarantee full compliance with the decision of the Court. Likewise, the representatives indicated that "the manner in which the [...] Venezuelan State w[ould] be applying the provisional measures ordered by the Court had been a burden for the beneficiary," for the following reasons: a) submission to the supervision of a Criminal Court of the Metropolitan Area of Caracas, which would have "caused a risk to the life and integrity of the [beneficiary]" since that would subject her to "periodic appearances before the court, and the verification of her activities"; b) the police security is only provided in the city of Caracas, even though it is well known that the beneficiary travels to different regions of the country for work and family reasons and Caracas is not her place of residence or work; and c) the beneficiary is not allowed "to make statements to the media about the implementation of the measures[, constituting] a totally unjustified form of prior censorship." According to the representatives, these issues have been repeatedly raised in their comments "but, to date, the Venezuelan State has not made any modifications, nor has the Court ruled [in that regard]". Moreover, they indicated that the State's measures were adopted without listening to the beneficiary and without taking into account her true needs for protection. The representatives also noted that there are inconsistencies in the January 2009 "Registry and Supervision of Service and Custody" sheet submitted by the State, given that although "police patrolling [was] confined to the Metropolitan Area of Caracas," the sheet indicated the provision of protection in places other than Caracas.

10. The Commission reiterated on several occasions that the State has not provided a response to the discontent expressed by the beneficiary as to the spatial limitation of the protective measures. It therefore asked the Tribunal to order the State to submit specific information regarding the measures adopted to protect the integrity of the beneficiary and, in particular, to broaden the scope of the protection of the beneficiary to beyond the Metropolitan Area of Caracas. Likewise, it argued that the fact that any issue related to the implementation of the protective measures is subject to a judicial action before the national courts entails a delay to the solution of problems that arise. Furthermore, the Commission submitted the following comments on the "Registry and Supervision of Service and Custody" sheets submitted by the State for the period of July to October, 2008: a) there are no sheets after October, 2008; b) it is odd that the second pages of the sheets of July and August record identical activities, times and days; c) although the sheets mention trips to a city outside Caracas, it is not clear whether the beneficiary was effectively accompanied; d) the sheets contain no record of a supposed trip by the beneficiary to the State of Guárico. Moreover, on several occasions, it repeated that the State failed to make reference to the actions taken to allow the participation of the beneficiary in the design and planning of the measures ordered by the Court. To this end, it indicated that the dialog between the parties

about the difficulties that they may come across in the implementation of the measures and possible solutions thereto is essential. According to the Commission, the information presented by the State is not enough to assess whether the measures of protection granted in favor of the beneficiary have been effective, in particular in relation to the protection granted outside the city of Caracas.

11. Regarding the discontent expressed by the representatives and the Commission at the manner in which the measures have been implemented, the State indicated that "the courts of the Republic have the executive authority to order the police bodies to provide protection to a particular citizen, as has been provided for the beneficiaries of the measures" and that "from the information presented by the beneficiary, it would not appear that the beneficiary had asked the court for a broadening of the territory within which protection is granted." Finally, it argued that the beneficiary had not expressed interest in improvements to the protection she receives, nor had she presented the information necessary to improve the protection provided by security forces.

b) Information on possible acts of harassment

12. The representatives reported that Ms. Guerrero Galluci and another person were accused in a criminal proceeding brought before the 6th Prosecutor's Office of the Judicial District of the State of Guárico of committing the crime of aggravated theft. In that case, the Third Control Tribunal of the State of Guárico de Valle de la Pascua issued arrest warrants for both accused individuals on August 24, 2007. According to the State, two days later, Mrs. Maria del Rosario Guerrero Galluci appeared before the court, which granted provisional release instead of deprivation of liberty. In addition, it indicated that "the arrest warrant [was] issued in full compliance with the law and [did] not constitute in any way an act of harassment." The representatives pointed out that the criminal investigation "was declared null and void due to defects of unconstitutionality" and they sustained that "the arrest warrant issued by the trial court is an act of harassment [...] that w[ould] psychologically affect the beneficiary and w[ould] put her at risk". Moreover, they stated that according to the terms of the conditional release, Mrs. Guerrero-Galluci has to appear before the Office of the Bailiff of the Judicial Circuit every 10 days; to do so, the beneficiary must travel through the state of Guárico, "where she no longer lives due to security issues [...] and where she has continu[ed] to be threatened publically by the Governor of the State during his weekly radio show."

13. Elsewhere, the State addressed the criminal proceeding in which Ms. Maria del Rosario Guerrero Galluci is supposedly to appear as a witness for a journalist who has been accused of the alleged crime of false accusation. The proceeding is in the investigative phase. Regarding this, the State argued that due to the nature of the case and the time that had elapsed since the filing of the accusation, Mrs. Guerrero Galluci would not be at risk since "to date, she [has] not received any kind of threat." For its part, the Commission argued that it should be taken into account that said case is in the investigative phase.

c) Information on the investigation of the facts

14. The State presented information regarding two ongoing criminal proceedings. First, it addressed the investigation related to the facts that gave rise to the adoption of the instant provisional measures, that is, the criminal investigation before the First Instance Trial Court of the Criminal Judicial Circuit of the State of Guárico against two officials with the Guárico State Police for the alleged commission of the crime of attempted murder and conspiracy to the detriment of Maria del Rosario Guerrero Galluci and another person. The 11th Prosecutor's Office of the State of Guárico and the 62nd Plenipotentiary Prosecutor's Office

have been assigned to investigate the case. At first, the State indicated that the two accused officials were in detention. Later, however, it stated that only one of them was in detention: the one who is also under investigation in another criminal proceeding in which Mrs. Guerrero Galluci is the victim. In that matter, the State reported that after a joinder of cases, a recusal of the judge hearing the case and several postponements of the oral hearing, a new date has been set for the public and oral trial. It also reported on the proceedings brought before the First Instance Control Court of the Criminal Judicial District of the State of Guárico against four persons for the alleged commission of the crimes of extortion, aggravated theft of a vehicle, illegal deprivation of liberty, resistance to authority, and misuse of a firearm to the detriment of the Venezuelan State and four persons, including Maria del Rosario Guerrero Galluci. Regarding this case, it indicated that the criminal investigation had been ordered to be continued through an ordinary proceeding, with the measure of preventive judicial deprivation of liberty against one of accused kept in place. The remaining defendants were granted provisional release. Later, on September 19, 2008, the 14th Prosecutor's Office of the Judicial District of the State of Guárico and the 36th and 62nd National Plenipotentiary Prosecutor's Offices brought formal charges against the four persons mentioned. Additionally, the State indicated that on four different occasions, the preliminary hearing in the case has been postponed. Finally, the State reported that on a request submitted by the Office of the Public Prosecutors of January 20, 2010, on February 24, 2010, a joinder of actions was decreed for the cases in which the accused is the same person who was subjected to a measure of deprivation of liberty. The oral and public trial related to both cases was set for July 25, 2011.

15. The representatives indicated that the criminal proceedings being conducted into the attacks and threats against the beneficiary of the measures "do not show any progress toward a final and definitive conviction of the accused" with a "delay in the criminal proceeding" being evident. Additionally, as regards the criminal proceeding related to the crimes of attempted murder and conspiracy to the detriment of the beneficiary, the representatives noted that the State did not furnish sufficient evidence to prove that the accused are effectively complying with coercive measures to deprive them of liberty, and thus "that they are not free and capable of committing new violent acts against the beneficiary". Therefore, the protection granted by the State should be maintained "even under the insufficient and partial conditions present[ed] [so] far." Regarding these same criminal proceedings, the representatives also indicated that according to the accusation and subsequent confirmation, four people were responsible for the facts, not two. Consequently, they asked the Court to order the State to investigate and, if possible, to identify all those responsible.

16. The Commission noted that the State did not present sufficient information regarding the different proceedings of the investigation into the facts related to these provisional measures. Therefore, it asked the Court to order the State to forward detailed and updated information on all the criminal proceedings. On several occasions, it also reiterated that according to the information provided, the criminal proceedings have not shown substantial progress. It recalled that "an effective and thorough investigation is an important measure for preventing the repetition of violent acts".

d) Grounds related to the request for rescission of these provisional measures

17. The State asked the Tribunal to rescind the provisional measures ordered to the benefit of Maria del Rosario Guerrero Galluci in 2006 (*supra* Having Seen 1) because currently, neither the requirements of extreme gravity and urgency nor the need to avoid irreparable damage have been satisfied pursuant to Article 63 of the American Convention and in conjunction with Article 27 of the Rules of Procedure of the Court. In this respect,

Venezuela put forward the following considerations: a) due to the nature of the case in which the beneficiary is a witness, as well as the time elapsed since the accusation was filed, the beneficiary of the measures does not face any risk, especially since to date, she has not received any threats; b) from the moment these measures were ordered, the beneficiary has neither suffered nor alleged any type of attack against her personal integrity; c) the Governor of the State of Guárico has changed twice since the moment the facts that gave rise to these measures took place, and according to Registry and Supervision of Service and Custody sheet, the beneficiary of the protective measures was regularly in the Metropolitan Area of Caracas and in the State of Miranda - that is, outside the jurisdiction (State of Guárico) where the facts that gave rise to these measures allegedly occurred; d) the State has demonstrated its willingness to solve the case and strictly comply with the protective measure in favor of the beneficiary and e) the 49th Plenipotentiary Public Prosecutor's Office would still be commissioned to ensure effective compliance with the measures of protection, which have been strictly fulfilled. In particular, the State indicated that the instant case would be similar to that of provisional measures left in place for many years but then rescinded by the Court⁵ because their length of time was not justifiable given that the American Convention establishes that "said measures are provisional and may not be prolonged for an extended time without justification."

18. The representatives reported that communication with the beneficiary has been limited and inconsistent for reasons beyond the control of the representatives, adding that the beneficiary "w[ould] not provide information on her whereabouts or information useful for systematically monitoring the status of compliance with the provisional measures or regarding her view point on the evolution of the risk that had led to the granting of the measures." This situation seriously limits the representatives' ability to provide support for their comments on the State's reports. In particular, regarding compliance with the protective measures, in the last brief, the representatives abstained from issuing a statement given the lack of communication with the beneficiary, which "seriously limite[d] the possibility of knowing whether, in fact, the protective measures are being complied with and how so." Additionally, in relation to the investigations, the representatives pointed out that the State "limit[ed] itself to outlining procedural formalities, without mentioning whether the real risk has ceased." Moreover, they indicated that even though it is true that the former governor of the State of Guárico left his post and investiture after the regional elections of November 2008, "no measures of restraint have been taken against him or any other officer of the police force involved in the attacks on the life and physical integrity of Mrs. [...] Guerrero Galluci such that it could be assumed that they will not take part in a new act of retaliation against the beneficiary." Regarding the cases mentioned by the State on which it based its arguments for requesting the rescission of these measures (*supra* footnote 5), the representatives argued that each case must be assessed according to its own circumstances of fact and context, given that the arguments of the State were intended to "create a sort of domino effect of recessions of each and every one of the provisional measures ordered [regarding] Venezuela, without taking into account the circumstances [...] of each case". Therefore, they asked the Court to maintain the measures.

19. The Commission argued that, in principle, it is appropriate to evaluate the time that has passed without threats or acts of harassment as an element to be assessed before a request for rescission of provisional measures. However, in matters like the present one, it is necessary to take an approach that takes into account other aspects, such as the risk

⁵ Cf. *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 26, 2009, first operative paragraph, and *Matter of Lilliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, first operative paragraph.

faced by the beneficiary as a result of filing a complaint against State agents of participating in human rights violations, a proceeding that is still at the investigative phase, according to information presented by the State. Moreover, the Commission presented the following considerations regarding the request for rescission of the provisional measures: a) in an Order dated November 29, 2007, the Court found that the information provided did not indicate whether the circumstances that led to the adoption of the instant provisional measures may have ceased; b) the lack of threats cannot on its own be considered proof that the situation of risk does not continue, as it may owe itself to the enforcement of the measures, especially when the criminal proceedings in progress have not produced results; c) the instant provisional measures were not requested solely based on threats against the beneficiary, since the threats were indeed carried out, and the information available would indicate that, to date, the responsibility for that fact has not been determined; and d) the nature of the rights threatened, that is, the life and physical integrity of Ms. Guerrero Galluci, as well as her ability to continue working in the defense of human rights and the context of human rights defenders, constitute the extreme of irreparability of the consequences that the granting of the provisional measures seeks to avoid. Consequently, it asked the Tribunal to rule that the measures must be maintained.

e) Considerations of the Court

20. The Court recalls in handing down measures of protection, the standard that it or its agents use for assessing the requirements is one of *prima facie*, the application of assumptions being on occasion necessary given a need for protection.⁶ This notwithstanding, the maintenance of protective measures calls for a more strict evaluation by the Court of the persistence of the situation that gave rise to those measures.⁷ The Tribunal recalls that the provisional measures are of an exceptional nature and that they refer to a specific temporal situation. Thus, due to their very nature, they cannot be perpetuated indefinitely.⁸ If a State requests the rescission or modification of the provisional measures so ordered, it must present evidence and arguments sufficient to allow the Tribunal to reach the conclusion that the risk or threat is no longer of extreme gravity and urgency to avoid irreparable damage. In turn, the beneficiaries' and the Commission's burden of proof and argument becomes greater as time goes by and new threats do not arise. Of course, the effective protection provided by the order of the Tribunal or its deterring effect may be the reason why no new threats have been committed. However, the Tribunal has considered that the lapse of a reasonable period of time without threats or intimidation, coupled with lack of an imminent risk, may lead to the rescission of provisional measures.⁹

⁶ Cf. *Case of Raxcacó Reyes et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, Considering 10, and *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 25, 2011, Considering 15.

⁷ Cf. *Matter of the Kankuamo Indigenous People*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering 7, and *Matter of the Mendoza Penitentiaries*. Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of July 1, 2011, Considering 30.

⁸ Cf. *Matter of the Jiguamiandó and Curbaradó communities*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, Considering 70, and *Case of Gutiérrez Soler*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of June 30, 2011, Considering 21.

⁹ Cf. *Matter of Gallardo Rodríguez*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, Considering 12, and *Case of Gutiérrez Soler*, *supra* footnote 8, Considering 21.

21. The instant measures were ordered due to the *prima facie* assessment that a situation of extreme gravity and urgency existed as far as the rights to life and personal integrity of the beneficiaries established in the Court's Order of July 4, 2006, given the attempt on her life that took place on April 21, 2006.¹⁰ Subsequently, through the Order of November 29, 2007, the Court ordered the provisional measures in favor of Ms. Maria del Rosario Guerrero Galluci be maintained given that the information presented by the parties did indicate that the circumstances giving rise to the adoption of the measures had ceased. This was because at that time, the representatives had reported "acts of harassment and intimidation against [the beneficiary] and her family" [...] putting her rights to freedom and humane treatment at risk."¹¹

22. The Tribunal notes that the main protective measures implemented by the State consist of permanent police patrolling, protection and surveillance on the part of officials working for what was at the time known as the Intelligence and Prevention Service Bureau (DISIP) and later on, the Bolivarian Intelligence Service (SEBIN). The Court appreciates the efforts made by the State with regard to the sheets it has forwarded on the guard services provided (*supra* Considering 8).

23. For their part, the representatives and the Commission have referred to specific aspects in the implementation of the provisional measures that they argued do not satisfy the needs of protection: the spatial limitations of the measures, the delays caused by the fact that the implementation of the measures is subjected to a judicial proceeding before domestic criminal courts, the alleged inconsistencies and anomalies in the "Registry and Supervision of Custody Service" sheets, the State's failure to provide travel expenses to the police officers in charge of the protection, and the State's failure to take steps to allow the beneficiary's participation in the design and planning of the measures without taking into account her true needs for protection (*supra* Considering 9 and 10). Notwithstanding the foregoing, the truth is that the State has to date maintained the protective measures in favor of Maria del Rosario Guerrero Galluci and has fulfilled - though irregularly - its duty to report on the implementation of these provisional measures (*supra* Having Seen 2).

24. Since the Order of November 29, 2007, the parties have not reported new acts of threats or harassment against the beneficiary. The only piece of relevant information on this aspect - presented by the State and the representatives on May 13 and September 16, 2008 - is related to the fact that the beneficiary and another person were accused of the crime of aggravated theft in a criminal proceeding pursued by the Sixth Prosecutor's Office of the Judicial District of the State of Guárico, with a warrant issued for their arrest (*supra* Considering 12). Given that three years have elapsed without the representatives presenting any subsequent information or any specific arguments related to the alleged acts of harassment against the beneficiary, the Tribunal does not have any evidence or recent information that would allow it to connect this circumstance to the maintenance of the provisional measures.

25. In addition, as to the criminal proceeding - in which Ms. Maria del Rosario Guerrero Galluci is supposedly a witness - involving a journalist accused of committing the crime of false accusation (*supra* Considering 13), the Tribunal notes that although the Commission had previously reported on the criminal proceeding,¹² there is no indication of subsequent

¹⁰ Cf. *Case of Guerrero Gallucci and Martínez Barrio*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering 6, 9 and 13.

¹¹ *Case of Guerrero Gallucci and Martínez Barrio*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 29, 2007, Considering 15 and 16.

¹² Cf. *Case of Guerrero Gallucci and Martínez Barrio*, *supra* footnote 11, Having Seen 2(c) and Considering 6.

information to connect that investigation to acts of harassment or threats against the beneficiary. Consequently, the Tribunal does not have evidence that would allow it to connect the existence of that investigation to the maintenance of the provisional measures.

26. Regarding this, the Court must take into account that according to the Preamble of the American Convention, international protection in the form of a convention “reinforces or complements the protection provided by the domestic law of the American States”. Therefore, should it be confirmed that the State in question has put in place effective protective mechanisms or actions for the beneficiaries of the provisional measures, the Tribunal could decide to rescind the provisional measures, placing the burden of the obligation to protect on the party primarily responsible, that is, the State.¹³ Should the provisional measures be rescinded by the Court for this reason, the State would have the obligation, pursuant to its duty to guarantee human rights, to maintain the protective measures it has adopted for as long as the circumstances require¹⁴ and where appropriate. In this regard, the Court notes that in its request for the rescission of these provisional measures, the State notes that the 49th Plenipotentiary National Public Prosecutor’s Office will still be assigned to ensure the effective compliance with the protective measure (*supra* Considering 17).

27. Moreover, the arguments of the representatives and of the Commission as to the maintenance of the provisional measures were based on the lack of progress made in the investigation of the domestic criminal proceedings and the risk that it may entail for the beneficiary (*supra* Considering 18 and 19).

28. Regarding the obligation to investigate the facts reported that gave rise to these measures, Article 1(1) of the Convention establishes States Parties’ general obligations to respect the rights and liberties recognized in the treaty and to ensure the free and full exercise of those rights and freedoms to all persons subject to its jurisdiction. In consequence, regardless of the existence of specific provisional measures, the State is specially obliged to guarantee the rights of the people in situation of risk and must expedite the investigation necessary to clear up the facts and, where applicable, punish those responsible.¹⁵ For this investigation, the State in question must make its best effort to establish all the facts surrounding the threat, as well as the way in which the threat was carried out; to determine whether there is a pattern of threats toward the beneficiary or the group or entity to which she belongs; to determine the purpose or goal of the threat; and to determine who is responsible for the threat and, if applicable, punish them.¹⁶

29. The Tribunal reiterates that the State’s alleged lack of investigation does not *per se* constitute a circumstance of extreme gravity and urgency that would merit the maintenance of the provisional measures. Also, the duty to investigate can at times require a considerable amount of time, during which the threat or risk may not necessarily be

¹³ Cf. *Matter of Luis Uzcátegui*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of August 20, 2003, Considering 13, and *Case of Caballero Delgado and Santana*, *supra* footnote 6, Considering 16.

¹⁴ Cf. *Case of Caballero Delgado and Santana*, *supra* footnote 6, Considering 16.

¹⁵ Cf. *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering 3, and *Case of Caballero Delgado and Santana*, *supra* footnote 6, Considering 21.

¹⁶ Cf. *Case of Caballero Delgado and Santana*, *supra* footnote 6, Considering 21.

extreme or urgent.¹⁷ Furthermore, the Court has stated that the analysis of the effectiveness of the investigations and proceedings in relation to the facts that gave rise to the adoption of provisional measures correspond to the examination of the merits of the case.¹⁸ Given that in this instant case, and as the Commission reported on August 27, 2007, there is not “a petition directly related to proceedings before the Commission,” the Court must ensure that the provisional measures are not denatured in the sense of being used to achieve a purpose that should be achieved through litigation.¹⁹ In sum, non-compliance with the duty to investigate is not, *per se*, a sufficient reason to maintain the provisional measures.²⁰

30. Finally, the Commission argued that Ms. Maria del Rosario Guerrero Galluci’s “capacity to continue her work as a human rights defender and the context faced by human rights defenders meet the standard of irreparability of consequences that the granting of the provisional measures seeks to avoid.” Regarding this, it is the Court’s view that a pleading based on a specific context is not *per se* sufficient to warrant keeping provisional measures in place if there are no specific facts that would allow the Court to reach solid conclusions on the effects of that context on the specific matter at hand.²¹

31. The Court notes that without prejudice to the fact that they have asked that the instant provisional measures be maintained subsequent to the State’s request they be rescinded, the representatives reported that communication with the beneficiary has been limited and scattered, and that the beneficiary would not present information on her whereabouts or her viewpoint regarding the evolution of the risk that gave rise to the adoption of the measures (*supra* Considering 18). Consequently, the Tribunal does not have information regarding the beneficiary’s current situation of risk that would prove the existence of the alleged situation of extreme gravity and urgency and the need to avoid irreparable damage. Likewise, this Court notes that the information provided does not offer any indications of an interest or wish on the part of the beneficiary to keep these provisional measures in force.

32. Finally, over the past four years, the Court has not been kept informed with specific information on specific situations of risk that the beneficiary has faced. In the same sense, the Tribunal finds that the hypothetical risk of threats against her for her participation in domestic criminal proceedings and a failure to clarify the facts that gave rise to the adoption of provisional measures in this case are not sufficient to conclude that a situation of extreme gravity and urgency exists that is likely to cause her irreparable harm persists.²² In this sense, the Tribunal finds that the parties have not submitted information to demonstrate that the situation of extreme gravity and urgency to avoid irreparable damage that existed at the moment the provisional measures were ordered in favor of Mrs. Maria del Rosario Guerrero Galluci still persists; therefore, it is appropriate to rescind the provisional

¹⁷ Cf. *Case of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering 24, and *Case of Caballero Delgado and Santana*, *supra* footnote 6, Considering 22.

¹⁸ Cf. *Matter of Pilar Noriega García et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering 14, and *Case of Caballero Delgado and Santana*, *supra* footnote 6, Considering 22.

¹⁹ Cf. *Matter of Lilliana Ortega et al*, *supra* footnote 5, Considering 4.

²⁰ Cf. *Matter of Lilliana Ortega et al*, *supra* footnote 5, Considering 17, and *Case of Caballero Delgado and Santana*, *supra* footnote 5, Considering 21.

²¹ Cf. *Matter of Carlos Nieto Palma et al*, *supra* footnote 5, Considering 19, and *Matter of Lilliana Ortega et al.*, *supra* footnote 5, Considering 24.

²² Cf. *Case of Caballero Delgado and Santana*, *supra* footnote 6, Considering 23.

measures ordered to her benefit. The Court notes that the rescission of the provisional measures does not mean that the State has fully complied with the orders issued by the Court within the framework of these measures.

33. Lastly, the Court recalls that Article 1(1) of the Convention embodies the general duty of States Parties to respect the rights and liberties recognized in Convention and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms at all times. Moreover, States have a specific duty to protect all people working in non-governmental organizations and give effective and adequate guarantees to human rights defenders so that they may carry out their work freely, and to prevent acts that would prevent or hamper that work, since it constitutes a positive contribution and supplements the efforts made by the State in its capacity as guarantor of the rights of individual under its jurisdiction.²³ Along with this, respect for human rights in a democratic State depends, to a large extent, on the respect and liberty ensured to human rights advocates.²⁴ For their part, provisional measures are exceptional in nature and are complementary to this general obligation of the States. In this regard, the basis on which the Court rescinds provisional measures can never imply that the State is relieved of its obligations to protect under the Convention. Hence, the Court emphasizes that irrespective of the existence of specific provisional measures, the State is obliged to guarantee Ms. Maria del Rosario Guerrero Galluci's rights.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority granted by Article 63(2) of the American Convention on Human Rights and Article 27 of its Rules of Procedure,²⁵

DECIDES TO:

1. Rescind the provisional measures ordered by the Inter-American Court of Human Rights in its Orders of July 4, 2006 and November 29, 2007, which were adopted to protect the rights to life and personal integrity of Ms. Maria del Rosario Guerrero Galluci.

²³ Cf. *Matter of Mery Naranjo et al.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of July 5, 2006, Considering 8, and *Matter of the Inter-ecclesiastical Truth and Justice Commission.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of November 22, 2010, Considering 23.

²⁴ Cf. *Case of Lysias Fleury.* Provisional Measures regarding Haiti. Order of the Inter-American Court of Human Rights of June 7, 2003, Considering 5, and *Matter of the Inter-ecclesiastical Truth and Justice Commission,* *supra* footnote 23, Considering 23. In the same sense, see Resolution 2412 (XXXVIII-O/08) of the General Assembly of the Organization of American States and Resolution 1842 (XXXII-O/02) of the General Assembly of the Organization of American States.

²⁵ Rules of Procedure passed in the LXXXV Regular Period of Sessions held from November 16 to 28, 2009.

2. Clarify that under the terms of Article 1(1) of the American Convention, the rescission of the provisional measures does not mean that the State has complied with its treaty obligations of protection.
3. Require the Secretariat of the Tribunal to notify the Bolivarian Republic of Venezuela, the Inter-American Commission on Human Rights and the representatives of the beneficiary of this Order.
4. Close the file on the instant case.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

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