

**Order of the
Inter-American Court of Human Rights*
of November 17, 2009
Provisional Measures regarding Venezuela
Matter of Guerrero-Larez**

HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights, (hereinafter, "the Inter-American Commission" or "the Commission") of November 13, 2009, and its appendixes, through which the Commission submitted to the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court", "the Court", or "the Tribunal") a request of provisional measures, according to the Articles 63(2) of the American Convention on Human Rights (hereinafter, "the American Convention", or "the Convention") and 26 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), with the purpose of making the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") protect the life and personal integrity of Francisco Dionel Guerrero Larez (hereinafter also "Mr. Guerrero Larez.")

2. The alleged facts upon which the request for provisional measures relies was presented by the Commission, as follows:

a) Mr. Guerrero Larez was deprived of liberty serving a sentence in the Venezuelan General Prison (Penitenciaría General de Venezuela, hereinafter also "PGV"), and since September 7, 2009, his relatives have not been able to communicate with him. Since that date, the father and wife of Mr. Guerrero Larez have tried without success to contact him, without receiving any information from the prison authorities regarding his situation and location. Among the requests issued by the family members and the representatives of Mr. Guerrero Larez, the following events have been found: i) on September 8, 2009, his father, Mr. Guerrero Sánchez, went to the Regional Command No. 2, Division No. 28, Second Company, San Juan de los Morros, with the intent to denounce that he received "a phone call in which it was indicated that his son had been murdered in the [PGV];" ii) on September 9, 2009, the wife of Mr. Guerrero Larez, Mrs. Hernández Colmenarez, went to the same Command to denounce that he had been missing since September 7, 2009, in the PGV; and "she declared that she received information concerning his murder within the Prison," and "published a press notice requesting information from the authorities;" iii) on September 10, 2009, the Ombudsman (Defensoría del Pueblo) carried out an act in which evidence was left that showed that acts targeted to find the possible beneficiary in the PGV had been carried out, without any results; iv) on September 23, 2009, the family members informed the Venezuelan Prison Observatory of the disappearance of the possible beneficiary and gave notice of the different versions and stories that they have received; such organization, on the days October 2, 5, and 13, 2009, sent a communication to the Prosecutor General of

* Judges Cecilia Medina Quiroga and Leonardo A. Franco informed the Court that, for reason of *force majeure*, they will not be able to participate in the deliberation and signing of the present Order.

the Republic, of the Ministry of Public Power for Internal Relations and Justice, and to the Sixth Court of First Instance in Criminal Law in Functions of Execution for the Metropolitan Area of Caracas respectively to present a demand for the disappearance and to request information in this respect, and on October 13, 2009, Mr. Guerrero Sanchez sent a communication to the Direction of Fundamental Rights of the Public Ministry, with the purpose of filing a demand regarding the disappearance. In this communication, Mr. Guerrero Sánchez mentioned that he had gone to visit his son but he was not in the prison, and that a member of the National Guard informed that a "PRAN", an inmate that "ruled the prisons, will turn him in the next day. He pointed out that he started receiving messages that indicated that Mr. Guerrero Larez was dead. Finally, he stated that he was afraid for his and his family's life given that their address was stated in the record;

b) on October 7, 2009, the Fifty-First Public Defender from the Caracas Metropolitan Area went to the PGV without being able to verify the presence of Mr. Guerrero Larez in the penitentiary center, a situation that was informed to the Sub-Director and to the General Secretariat of such facility;

c) on November 4, 2009, in agreement with the aforementioned background and that stated in Article XIV of the Inter-American Convention on Forced Disappearance of Persons, the Commission sent an urgent request for information to the State, for it to inform, within the next 48 hours, of the location of Mr. Guerrero Larez, his physical condition, and for it to point out the reasons why contact and visits with his relatives had not been possible, and any other information regarding his location and situation. On November 6, 2009, the State requested a prudential extension to submit the requested information. Through a communication on November 9, 2009, the Commission granted the State a 72 hour extension, and the information requested has not been received to this date, and

d) on November 11, 2009, the Commission received a new brief by the representatives, in which they informed that they did not yet have notice regarding the location of Mr. Guerrero Larez. In the same communication, they stated that the Direction for the Protection of Fundamental Rights of the Public Ministry "only informed them that the facts were being heard by the Guarico State Prosecution."

3. The arguments of the Commission to ground its request of Provisional Measures, as follows:

a) the situation of extreme gravity and urgency was demonstrated by the following circumstances: i) Mr. Larez was under the custody of the State on September 7, 2009, the last time there was any notice of him. It is been over two months without any notice, despite the efforts carried out by his family and of other entities, who were not given any response from the penitentiary authorities. Due to the special position of the State as the guarantor of people deprived of their liberty, when a person under State custody is allegedly disappeared, without any acknowledgement or clarification by the State, it is reasonable to infer that such person is in a situation of grave risk; ii) there is a context of persistent violence acts in several penitentiary centers in Venezuela, characterized by the lack of State control of the prisons and weapon trafficking, a situation that favors the creation of bands and gangs that act with deep violence against the inmates themselves; iii) there is evidence concerning the existence of this type of gangs in the PGV where Mr. Guerrero Larez was deprived of his liberty. The wife and the father of Mr. Guerrero Larez have received messages and information from other inmates, and also from an official of the National Guard that indicate that the possible beneficiary could have died and that he

was under the control of a group of inmates called PRAN, that exercise control over the other inmates, and iv) the relatives of Mr. Guerrero Larez and their representatives have turned to several State institutions related with penitentiary centers to obtain information about Mr. Guerrero Larez without obtaining any answer whatsoever;

b) of the request for urgent information carried out by the Commission, which the State abstained from timely answering. Due to this lack of information, the Commission does not have any data regarding the adoption of effective measures by the State to establish what happened to Mr. Francisco Dionel Guerrero Larez, and

c) the nature of the threatened rights, the rights to life and to personal integrity, constitute the extent of irreparability of consequences that this request for provisional measures seeks to avoid.

4. The request by the Inter-American Commission for the Court to request from the State, based on Article 63(2) of the American Convention, Article 26 of the Rules of Procedure, and Article 74 of the Rules of Procedure of the Commission, the following measures:

a) to inform immediately to the Inter-American Court of Human Rights and to the relatives of Mr. Guerrero Lárez about his situation and/or location;

b) once the location of Mr. Guerrero Larez is determined, to adopt the necessary measures to protect his life and personal integrity, after carrying out an evaluation of the reasons that originated his disappearance while he was under State custody, and of the situation of risk inside the penitentiary center. These measures shall be agreed upon with the possible beneficiary and his representatives;

c) to carry out an investigation of the facts that led to the request of provisional measures, as a mechanism to prevent and impede any risk situation for the life and personal integrity of Mr. Guerrero Larez while he was under State custody, and

d) to inform about the measures adopted in virtue of the aforementioned items.

CONSIDERING:

1. That Venezuela is a State Party to the American Convention since August 9, 1977, and, according to the Article 62 of the Convention, accepted the contentious jurisdiction of the Court on June 24, 1981.

2. That Article 63(2) of the American Convention states 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. That in terms of Article 26 of the Rules of Procedure of the Court:

1. At any stage of the proceeding involving cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on

its own motion, order whatever provisional measures it deems pertinent, pursuant to Article 63(2) of the Convention.

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

[...]

4. That in International Law of Human Rights, provisional measures have a character that is not only cautionary in the sense of preserving a legal situation, but also fundamental to give protection to Human Rights, to the extent that they seek to avoid irreparable damages to persons. The measures are applied as long as the basic requirements of extreme gravity and urgency and of the prevention of irreparable damages to persons are met. In this way, provisional measures transform into a true jurisdictional guarantee of a preventative character.¹

5. That the disposition established in Article 63(2) of the Convention grants an obligatory character to the adoption, by the State, of the provisional measures ordered by this Tribunal, given that the basic principle of the Law of State Responsibility, supported by international jurisprudence, has pointed out that the States shall fulfill their conventional obligations in good faith (*pacta sunt servanda*).²

*

* *

6. That the present request for provisional measures is not related with a case submitted to the Court, but originated by a request of provisional measures presented before the Inter-American Commission. The Court does not rely upon information regarding the facts submitted to the Court as part of a contentious case before the Inter-American System, or that began as a petition before the Inter-American Commission regarding the merits related with the request.

7. That in earlier opportunities, this Court interpreted that the phrase "a case not yet submitted to the Court" contained in the Article 63(2) *in fine* of the American Convention, poses, at least, the existence of a possibility that the matter that justifies the request of provisional measures can be submitted to the consideration of the Tribunal in its contentious jurisdiction. That in order for such minimum possibility to exist, the procedure shall have been initiated before the Commission as established in Articles 44 and 46 to 48 of the American Convention.³

¹ Cf. *Case of Herrera Ulloa*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001. Considering fourth; *Matter of Fernandez Ortega et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of April 30, 2009, Considering fifth, and *Case Gomes Lund et al. (Guerrilha do Araguaia)*. Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of July 15, 2009, Considering fourth.

² Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering sixth; *Case of the 19 Tradesmen v. Colombia*. Monitoring Compliance with Judgment and Provisional Measures. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering fourth, and *Matter of Fernandez Ortega et al.*, *supra* note 1, Considering sixth.

³ Cf. *Matter of García Uribe et al.* Request for Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering third and fourth; and *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Request for Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering fifth.

8. That the Court considers it necessary to clarify that, in view of the cautionary character of provisional measures (*supra* Considering 4), exceptionally, it is possible that the Tribunal orders them even when a contentious case does not exist, strictly speaking, in the Inter-American system, such as in situations that, *prima facie*, can have a result of grave and urgent effects upon human rights. For this, the Court must make a valuation of the problem raised, the effectiveness of the state actions against the situation described, and the amount of protection that is lacking for the persons who requested the measures in case that they are not adopted. In order to achieve this objective, it is necessary that the Inter-American Commission present a sufficient motivation that covers the criteria signaled and that the State does not demonstrate in a clear or sufficient manner the effectiveness of the determined measures that were adopted in the internal jurisdiction.⁴

9. That the information supplied by the Commission shows that Mr. Guerrero Larez, who was deprived of liberty while fulfilling a penalty of confinement in the General Penitentiary of Venezuela, was found missing since September 7, 2009 (*supra* Having Seen 2(a)), the date on which a family member had a telephone call with him for the last time. On the same date, another family member received a telephone call that indicated that Mr. Guerrero Larez have been deprived of his life in the Penitentiary. On the other hand, the Court does not rely on the information that such person left the penitentiary voluntarily.

10. That Article 63(2) of the Convention demands that for the Court to provide provisional measures, three conditions must coincide: i) "extreme gravity;" ii) "urgency;" and iii) to try to "avoid irreparable damages to persons." These three conditions are co-existent and must be present in each situation in which the intervention of the Tribunal is requested.⁵ In the present matter, the extreme entity and the intensity of the situation of risk served as a warning for the alleged disappearance of Mr. Guerrero Larez. Likewise, the Tribunal considers that the intervention to prevent the threat shall not be postponed, because the wait and lack of a response implicate in themselves a danger. Finally, the irreparable character of a situation of grave and urgent risk is evident related with the rights to life and personal integrity, and the Tribunal has the obligation to protect when the circumstances established in Article 63(2) of the American Convention coincide.

11. That, for its part, the Tribunal observes that the family members and the representatives denounced the act before various state authorities, such as: a) the National Board of Penitentiary Services,⁶ b) the Ministry of the People's Power for Interior Relations and Justice,⁷ c) Sixth Judge of the First Instance of Criminal Law in charge of the execution of the Metropolitan Area of Caracas,⁸ d) the Prosecutor General of the Republic,⁹ e) the

⁴ Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 3, Considering ninth.

⁵ Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering fourteenth.

⁶ Cf. Request for Provisional Measures of November 13, 2009, Record of the National Direction of Penitentiary Services, Appendix 9.

⁷ Cf. Request for Provisional Measures of November 13, 2009, Request of the Venezuelan Observatory of Prisons, received by the Office of the Ministry of People's Power for Interior Relations and Justice on October 5, 2009, Appendix 10.

⁸ Cf. Request for Provisional Measures of November 13, 2009, Request of the Venezuelan Observatory of Prisons before the Sixth Judge of the First Instance in Criminal Law in function of the execution of the Metropolitan Area of Caracas, received October 13, 2009, Appendix 11.

⁹ Cf. Request for Provisional Measures of November 13, 2009, Request of the Venezuelan Observatory of Prisons received by the Unit of the Secretary General of the Public Ministry on October 2, 2009, Appendix 12.

Director of Fundamental Rights of the Public Ministry,¹⁰ f) the Regional Command No. 2 – Detachment No. 28 – Second Company of the National Guard of San Juan de los Morros,¹¹ and g) the Ombudsman.¹² Some of these authorities even visited the Penitentiary, interviewed the criminal authorities, and realized the situation of indecision regarding Mr. Geurrero Larez. In this respect, a public criminal defender said that:

The convicted did not appear in the penitentiary population of the establishment, therefore I interviewed the Sub-Director [...] and the Secretary General [...]. I also interviewed the Assistant Prosecutor 9 for Execution of the State of Guárico who maintained that an Inspection was made of the penitentiary population and of the convicted before identifying him as disappeared¹³.

12. That, additionally, the Court warned and considered, regarding the adoption of the present Order, the weight of the time extension awarded by the Inter-American Commission, for which the State has not given a response to the urgent request for information issued on November 4, 2009, in the terms of Article XIV of the Inter-American Convention on the Forced Disappearance of Persons (*supra* Visto 2.c). As it has acted previously,¹⁴ the Tribunal emphasizes that it is vital that the State respond and offer information when the organs of the Inter-American System of Human Rights request it, in a way that the mechanisms of regional protection can function in an efficient manner. Such lack of an answer by the State permits the presumption that the request for urgent information has not produced the intended effect and that the situation of risk, which motivated the request still exists.

13. That it is important to recall that Article 1(1) of the Convention establishes the general obligation of the State Parties to respect the rights and liberties consecrated in it and to guarantee the free and full exercise to each person that is subject to its jurisdiction, which is imposed not only in the relationship of power of the State but also in the relationship with the actions of particular third parties. This Court has considered that the State holds a special position as guarantor with respect to persons deprived of liberty due to the fact that the penitentiary authorities have total control over them. Likewise, the Court has signaled that independently of the existence of specific provisional measures, the State is especially obligated to guarantee the rights of persons in circumstances regarding the deprivation of liberty.¹⁵

¹⁰ Cf. Request for Provisional Measures of November 13, 2009, the request of Mr. Guerrero Sanchez, received by the Board of Fundamental Rights of the Public Ministry on October 13, 2009, Appendix 13.

¹¹ Cf. Request for Provisional Measures of November 13, 2009, charges of Mr. Guerrero Sanchez of September 8, 2009, and of Mrs. Hernandez Colmenarez of September 9, 2009, Appendixes 14 and 15.

¹² Cf. Request for Provisional Measures of November 13, 2009, Act of the Office of the Ombudsman of the State of Guarico on September 10, 2009, Appendix 16.

¹³ Cf. Request for Provisional Measures of November 13, 2009, Appendix 7, Communication of the Public Defender No. 51 of the Metropolitan Area of Caracas.

¹⁴ Cf. *Matter of A.J. et al.*, Provisional Measures regarding Haiti. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering ninth.

¹⁵ Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* note 3, Considering 11; and *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the President of the Inter-American Court of Human Rights of August 22, 2007, Considering seventeenth.

14. That the *prima facie* standard of appreciation in a matter and the application of presumptions before the necessities of protection have led the Court to order measures in distinct occasions.¹⁶

15. That the person indicated by the Inter-American Commission in its request for provisional measures is found, *prima facie*, in a situation of extreme gravity and urgency, given that his life and personal integrity are being threatened and are in grave risk. As a consequence, the Inter-American Court finds it necessary to give protection to such person through provisional measures, in light of that provided in the American Convention.

16. That the Tribunal finds it timely to remember that regarding provisional measures, the Court considers only and strictly those arguments that relate directly to extreme gravity, urgency, and the need to avoid irreparable harm to persons. Any other act or argument can only be analyzed and resolved during the consideration of the merits of a contentious case.¹⁷

17. That the adoption of provisional measures does not imply an eventual decision about the merits of the existing controversy between the petitioners and the State if the case, finally, comes before the Court,¹⁸ nor is the State's responsibility for the denounced acts prejudged.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Articles 2 and 30 of its Rules of Procedure,¹⁹

DECIDES:

¹⁶ Cf. *Inter alia*, *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order of the President of the Inter-American Court of Human Rights of January 13, 2006, Considering sixteenth. *Matter of Fernandez Ortega et al.*, *supra* note 1, Considering fourteenth; and *Case of Mack Chang et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering thirty-second.

¹⁷ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad & Tobago, Order of the Inter-American Court of Human Rights of August 29, 1998, Considering sixth; *Matter of Fernandez Ortega et al.*, *supra* note 1, Considering eighteenth; and *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of January 26, 2009, Considering twenty-second.

¹⁸ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad & Tobago, Order of the President of the Inter-American Court of Human Rights of July 13, 1998; Considering sixth; *Matter of Fernandez Ortega et al.*, *supra* note 1, Considering nineteenth; and *Matter of Tyrone DaCosta Cadogan*. Provisional Measures regarding Barbados. Order of the Inter-American Court of Human Rights of December 2, 2008, Considering eleventh.

¹⁹ Rules approved by the Court in its XLIX Ordinary Period of Sessions, held November 16-25, 2000 and partially reformed during the LXXXII Ordinary Period of Sessions, held January 19-31, 2009, in conformity with Articles 71 and 72 of the same.

1. To require the State to adopt, immediately, the measures necessary to determine the situation and whereabouts of Francisco Dionel Guerrero Larez and to protect his life and personal integrity.
2. To require the State to inform the Inter-American Court of Human Rights by November 20, 2009, regarding Operative Paragraph 1 of the present Judgment, hence the State report can be heard by the Tribunal at its headquarters in San Jose, Costa Rica, in the LXXXV Period of Ordinary Sessions.
3. To require, likewise, that the State inform the Inter-American Court of Human Rights every two months, beginning on November 20, 2009, of the provisional measures adopted in conformity with this decision.
4. To request the representatives of the beneficiaries and the Inter-American Commission to present to the Inter-American Court of Human Rights the observations that they find pertinent regarding the State's report mentioned in resolution point 2 of the present Judgment no later than November 25, 2009.
5. To request the representatives of the beneficiaries and the Inter-American Commission on Human Rights to present their observations in a time period of four and six weeks, respectively, from the notification of the State's reports that are indicated in the third resolution point.
6. To request the Secretariat of the Court to notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these measures, and the State.

Done in Spanish in San Jose, Costa Rica, on November 17, 2009.

Diego García-Sayán

President in exercise

Sergio García Ramírez

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
Presidente in exercise

Pablo Saavedra Alessandri
Secretary