

**Order of the President of the
Inter-American Court of Human Rights
of June 14, 2007
Provisional Measures regarding Venezuela
Case of Luisiana Ríos *et al.***

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal") on November 27, 2002, through which it ordered the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"), upon request of the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), the adoption of provisional measures to protect the life and the right to humane treatment of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, and Argenis Uribe, employees of the television station Radio Caracas Televisión (RCTV).¹ Said request was in relation to a petition that was being processed at that time before the Commission.

2. The Orders issued on November 21, 2003, September 8, 2004, and September 12, 2005, through which, based on subsequent requests for an expansion of the mentioned measures presented by the Commission in relation to a petition that at that time was being processed before the latter, the Tribunal expanded the provisional measures ordered.² (*supra* Having Seen paragraph 1) These measures are in force, thus the State currently has the obligation to:

[...A]dopt, without delay, all measures necessary to protect the life and right to humane treatment of Messrs. Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Carlos Colmenares, Noé Pernía, and Pedro Nikken, as well as the freedom of expression of the last three.

[...A]dopt, without delay, the measures necessary to protect the life, right to humane treatment, and freedom of expression of all the reporters, directors, and employees of the social media Radio Caracas Televisión (RCTV), as well as that of the people in the installations of said social media (RCTV) or related to its journalistic operation.

[...A]dopt, without delay, the measures necessary to offer protection around the headquarters of the social media Radio Caracas Televisión (RCTV).

[...]investiga[te] the facts that led to the adoption of these provisional measures and their expansion, in order to identify those responsible and impose on them the corresponding punishments.

¹ Cf. *Matter of Luisiana Ríos et al. v. Venezuela. (Radio Caracas Televisión –RCTV-). Provisional Measures regarding Venezuela.* Order of the Inter-American Court of Human Rights of November 27, 2002.

² Cf. *Matter of Luisiana Ríos et al. v. Venezuela. Provisional Measures regarding Venezuela.* Order of the Inter-American Court of Human Rights of November 21, 2003, and *Matter of Luisiana Ríos et al. v. Venezuela (Radio Caracas Televisión –RCTV-). Provisional measures regarding Venezuela.* Orders of the Inter-American Court of Human Rights of September 8, 2004 and September 12, 2005.

[...]include the beneficiaries of the measures or their representatives in the planning and implementation of the protection measures and [...], in general, [...] keep [them] informed of the progress of the measures ordered by the Inter-American Court of Human Rights.

3. The reports presented by the State and the corresponding observations to the same made by the Commission and the beneficiaries' representatives, within the framework of the provisional measures ordered by the Court (*supra* Having Seen paragraphs 1 and 2).

4. The order of the Court of January 24, 2007, through which a request made by the beneficiaries of the provisional measures and their representatives of January 22, 2007 for the "extension of the Provisional Measures" ordered was declared inadmissible "since those who present[ed] it did not have the requirements of procedural legal standing to present it."

5. The application presented by the Inter-American Commission on April 20, 2007 against Venezuela, with regard to the *Case of Luisiana Ríos et al. v. Venezuela* (Number 12.441).

6. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of May 21, 2007, through which it notified the mentioned application to the parties.

7. The brief of May 26, 2007, received on that same day by e-mail at the Secretariat and with its appendixes two days later, through which eight people,³ seven of which are alleged victims identified in that application (*supra* Having Seen paragraph 5)⁴, presented a request for the adoption of provisional measures. In this request they also stated that it was presented by "the other journalists and employees and directors of [RCTV] [...], acting on [their] behalf and proceeding also on behalf and in representation of the other people, journalists, directors, and other employees that work at RCTV." In this request they stated, *inter alia*, that:

- a) the applicants have legal standing to present said request "in [their] condition of journalists, directors, and employees of RCTV[, since they are alleged] victims and applicants in a case" before the Court;
- b) after the last order for the extension of provisional measures ordered by the Court on September 12, 2005, supposedly "new and consecutive facts have occurred, aggravated as of last December 28, 2002." They state that these acts refer to the "formal announcement of the closing of operations of RCTV through the non-renovation of the concession to this social media; the emission of state acts that formalize that decision to be executed on May 27, 2007 at midnight; the rejection of all the judicial protection measures carried out in national courts; [the precautionary decision of the Constitutional Chamber of the Supreme Court of Justice May 25, 2007], through which RCTV is stripped [...] of some of its properties in order to put them in the possession and for the use of the new television channel created by the State (TEVES) to operate the VHF frequency that has been operated up to now by RCTV;"

³ Messrs. Luisiana Ríos, Isabel Mavarez, Isnardo Bravo, David Pérez Hansen, Antonio Monroy, Javier García Flores, José Pernalete, and Eduardo Sapene.

⁴ Mr. José Pernalete is not an alleged victim in the application indicted in the fifth having seen paragraph of the present Order.

- c) "the State's latest actions [... would] imply a new failure to comply with its international obligations in what refers to human rights[, since] they directly and deliberately violate the Commission's conclusions and recommendations included in the Report pursuant to Article 50 of the Convention and therefore the claims presented in the Commission's application, [exposing those who request], in a virtually irreparable manner, to damages greater than those already caused [to them];"
- d) "on March 29, 2007, the Ministry of Popular Power for Telecommunications and Information Technology [had] notif[ied] RCTV of Communication N° 0424 of a mere declarative nature, where it confirms the decision of the National Executive to declare the termination of the concession;" [...] "however, they deliberately ignored Article 3 of [Decree 1.577], which acknowledges a right for the extension of 20 more years to concessionaries that have complied with the Law during the exercise of their rights as said concessionaries;"
- e) "the statements offered by the [...] Ministry of Popular Power for Telecommunications and Information [would] confirm that the decision of the National Executive and the Instruction that the [...] President of the Republic has given [said] Ministry is to prevent that [...] RCTV continue operating as an open television station in VHF as of May 28th, as an [alleged] political sanction to its independent and critical editorial line;"
- f) "the true reason [...] behind the decision to [...] not renew the concession, [would be] to sanction the exercise of the directors', journalists', and other employees' freedom of speech;"
- g) "the announcement and [...] the formal communication that [they would] only await the expiration [of the] term to suppress RCTV" is a general and imminent threat to the freedom of expression of those employed in social communication; likewise, "it is a breach of the right to work of said employees, as well as to the society's right to freely receive information;"
- h) the alleged "governmental threats and decisions to order an immediate closing on May 27th of the present year [...], have also caused the employees of RCTV a damage to [their] right to humane treatment, both mental and physical." Said "threat does not end there, but instead it falls upon the entire society." Those "threats [...] contradict (or at least ignore in a clear manner) the judgment that the [Commission] has already issued with regard to the detrimental effect of the reversal and/ or non-renewal of the concession over the exercise [of the] right to freedom of expression [of the] victims [of the] case currently [...] before the Inter-American Court and that has previously resulted in the adoption [...] of provisional measures ordered for [their] protection and whose expansion [they request] in an urgent manner through the [mentioned brief];"
- i) the "State's decision to close RCTV by not renewing the concession and before the [alleged] lack of judicial protection [...] places [the beneficiaries] in a situation of extreme gravity and urgency that requires the intervention of the international precautionary judicial protection, in order to avoid the occurrence of irreparable damages to them, the rest of the journalists of RCTV and the Venezuelan society [...] This [would] mean [then] that the Court would have to adopt measures to preserve the rights of the parties in controversy, ensuring

that the judgment on merits will not be affected by their actions *pendente lite*, and

- j) the provisional measures that “they request from [the] Court, [would] also comply, in an irreplaceable manner, a protective purpose. In this context, the Court’s provisional measures [would be] the only and last legal measure offered to [them] by the Convention to protect [their] human rights before the [alleged] imminence of their violation.”

In this brief the representatives asked the Court to order the following provisional measures to the State:

- a) that, as a measure of non-innovation, it abstain from all decisions or acts that result in preventing RCTV from continuing with its normal operation [...] until the processing of the case before the Court has concluded [...];
- b) that, if measures such as the closing of the transmissions of RCTV and the seizure of its properties by the State have been executed, it order the State to reestablish the situation until the conclusion of the processes before the Court [...], so that RCTV [...] may continue to operate normally [...];
- c) that it abstain from threatening or carrying out against said station, as well as all the journalists, directors, shareholders and employees of that media [...], any form or act of arbitrary cancellation or non-renewal of the concession that allows it to operate as a open television station in Venezuela;
- d) that it abstain from any other action addressed to illegitimately restricting the freedom of expression and properties and, in general, the human rights of those who sign [the request for provisional measures], and
- e) that the totality of the provisional measures [granted] by the Court [...] be ratified.

8. The brief of May 29, 2007 and its appendixes, received on June 4, 2007 at the Secretariat of the Court, through which fourteen people,⁵ two of which had enacted the brief of May 28, 2007,⁶ (*supra* Having Seen paragraph 7) alleged “victims and applicants, in the case currently being processed before the Inter-American System[, ...] embrace[d] the [mentioned] request presented before the Court [...] asking the Court to urgently adopt immediate Provisional Measures before the imminent danger that grave and irreparable damages be caused to [their] human rights, specifically against their freedom of expression, caused by the closing of the transmissions [of RCTV].” In said brief, besides coinciding with that argued in the mentioned request (*supra* Having Seen paragraph 7) they stated, *inter alia*, that:

- a) on “May 27, 2007 at 11:59:59 the State [...] executed its decisions both to close RCTV for the alleged expiration and non-extension of the concession and the measure to take or seize the transmission equipment,” and
- b) “the request to adopt these Provisional Measures by the Court [...] would also be base[d] on the need to protect [them] in [their] condition of victims in the *Case of Luisiana Ríos et al. v. Venezuela* [...] whose application has been presented by the Commission [...] before the [...] Court and whose situation has been worsened in an extreme manner by the recent decisions adopted by the State.”

Based on the above, in this brief they asked the Court to order the following provisional measures to the State:

⁵ Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía, and Carlos Colmenares.

⁶ Mrs. Isabel Mavarez and Mr. Eduardo Sapene.

- a. Reestablish the situation until the conclusion of the process before the Inter-American Court of Human Rights of the *Case of Luisiana Rios et al. v. Venezuela*, in which they are victims and parties, so that RCTV may continue operating normally as a television station, in the same conditions in which it operated before the execution of said measures;
- b. That it abstain from threatening or executing against said television station, as well as against all journalists, directors, shareholder, and employees of said social media, all form or action of arbitrary cancellation or non-renewal of the concession that allows it to operate as an open television station in Venezuela;”
- c. “That it abstain from any other action addressed to illegitimately restrict the freedom of expression and property and, in general, the human rights of those who enact the [...] Petition; and finally,
- d. That it ratify in their totality the Provisional Measures previously ordered by the Court for [their] protection and that it once again order that the State comply with them completely.

CONSIDERING:

1. That the State ratified the American Convention on August 9, 1977 and, pursuant to Article 62 of the same, it accepted the compulsory 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 relation to this matter, Articles 25(1) and 25(2) of the Rules of Procedure of the Court establish that:

[a]t any stage of the proceeding involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damages to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

[w]ith respect to matters not yet submitted to it, the Court may act at the request of the Commission.

4. That Article 1(1) of the Convention enshrines the duty the States Parties have to respect the rights and freedoms acknowledged in that treaty and ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That the State’s obligation to adopt the provisional measures ordered in the Court’s Orders mentioned are in force (*supra* Having Seen paragraphs 1 and 2).

6. That after the mentioned orders of provisional measures, the Inter-American Commission presented a case before the Inter-American Court seeking that the latter establish the alleged responsibility of the State for the violation of the rights to freedom of expression, to a fair trial and judicial protection of 20 people, who are also the beneficiaries of the provisional measures already ordered by the Court (*supra* Having Seen paragraphs 1, 2, 7, and 8).

7. That the facts indicated as grounds of the request of May 26th and June 4, 2007 (*supra* Having Seen paragraphs 7 and 8) are, among others, the alleged threat of reversal and/ or non-renewal of RCTV's concession as a Venezuelan television station, the alleged formalization of the decision to not renew the concession of the radio-electric frequency operated by RCTV, the alleged lack of judicial guarantees with regard to the recourses presented by the alleged victims in relation to the aforementioned, the alleged execution of the decisions by state authorities to both close RCTV because of the alleged expiration and non-extension of the concession and the alleged seizure of properties of the shareholders of RCTV to put them at the disposal of a new television operator that would occupy that frequency, without the alleged existence of any legal process of expropriation or forceful acquisition. The representatives argue that these facts would necessarily and irreparably result in a breach of the freedom of expression of the alleged victims, different to those considered in the provisional measures already ordered by the Court on November 27, 2002, November 21, 2003, September 8, 2004, and September 12, 2005 (*supra* Having Seen paragraphs 1 and 2).

8. That according to that stated in its last order issued in *Matter of Luisiana Rios et al. v. Venezuela* (*supra* Having Seen paragraph 4), when the Court ordered the adoption of the provisional measures and their subsequent expansion, it determined the mentioned protection for the freedom of expression in direct relation with the danger for their life and right to humane treatment as a consequence of the alleged threats and aggressions to which the beneficiaries of the measures were being subject.⁷

9. That when a request of provisional measures is presented, it corresponds to the Court to consider only and exclusively those arguments related directly with the extreme gravity, urgency and the need to avoid irreparable damages to the persons. Any other fact or argument can only be analyzed and decided on by the Court during the consideration of the merits of a case.⁸

10. That in this case the existence of a good right cannot be determined without issuing a ruling on the merits of the matter presented, which implies revising the conformity of the facts argued by the alleged victims with the American Convention. A ruling with regard to the merits is done through a judgment within the process of a case presented to the Court and not through the request of provisional measures. In effect, the adoption of the measures requested could imply an anticipated judgment by interlocutory proceedings with the subsequent establishment of some of the facts and their corresponding consequences object of the main debate of the case presented

⁷ Cf. *Matter of Luisiana Rios et al. v. Venezuela (Radio Caracas Televisión –RCTV–). Provisional measures regarding Venezuela*. Order of the Inter-American Court of Human Rights of January 24, 2007, considering clause number nine. See also, Having Seen paragraphs of the Orders adopted by the Inter-American Court of Human Rights on November 27, 2002, November 21, 2003, September 8, 2004, and September 12, 2005. See also the Order of the Court of January 24, 2007, considering clause number nine (*supra* Having Seen paragraph 2).

⁸ Cf. *Matter of Castañeda-Gutman v. Mexico. Request for Provisional Measures regarding the United States of Mexico*. Order of the Court of November 25, 2005, considering clause number eight; *Case of James et al. v. Trinidad and Tobago. Provisional Measures regarding Trinidad & Tobago*. Order of the Court of August 29, 1998. Series E No. 2, considering clause number 6; *Case of Herrera-Ulloa v. Costa Rica. Provisional Measures regarding Costa Rica*. Order of the President of the Court of April 6, 2001, considering clause number four and Order of the Court of September 7, 2001, considering clause number eight; *Case of Cesti-Hurtado v. Peru. Provisional Measures regarding Peru*. Order of the President of the Court of July 29, 1997, considering clause number five and Order of the Court of September 11, 1997, considering clause number five.

before the Tribunal.⁹ Therefore, it does not correspond to order, in the terms of Article 63(2) of the Convention, the adoption of the measures requested (*supra* Having Seen paragraphs 7 and 8).

11. That the present Order is not a pre judgment of that argued by the Inter-American Commission in its application or that presented in the mentioned request.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authorities granted by Article 63(2) of the American Convention of Human Rights and Article 25 of its Rules of Procedure, and prior consultation with the other Judges of the Court,

DECIDES:

1. To dismiss, for the reasons presented in considering clauses number nine and ten, the request for provisional measures presented on May 26th and June 4, 2007.
2. To require that the State maintain the provisional measures ordered in the Orders issued by the Court on November 27, 2002, November 21, 2003, September 8, 2004 and September 12, 2005 (*supra* Having Seen paragraphs 1 and 2).
3. Notify the present Order to the State, the Inter-American Commission of Human Rights, and the representatives of the alleged victims.

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

⁹ Cf. *Matter of Castañeda-Gutman v. Mexico. Request for Provisional Measures regarding the United States of Mexico*. Order of the Court of November 25, 2005, considering clause number six.

So ordered,

Pablo Saavedra Alessandri
Secretary

Sergio García Ramírez
President