

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF SEPTEMBER 5, 2001**

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

BÁMACA VELÁSQUEZ CASE

HAVING SEEN:

1. The June 30, 1998 Order of the President of the Inter.-American Court of Human Rights (hereinafter "the President of the Court"), wherein he decided:

1. To request the State of Guatemala to adopt forthwith such measures as are necessary to protect the integrity of Mr. Santiago Cabrera López, so that the Court might examine the pertinence of the provisional measures requested by the Inter-American Commission on Human Rights.

2. To request the State of Guatemala to submit a report by July 17, 1998, on the measures taken pursuant to the President's order and its view on the measures requested by the Inter-American Commission on Human Rights so that the information might be brought to the Court's attention.

3. To request the Inter-American Commission on Human Rights to present its observations on the initial report submitted by the Guatemalan State within one month from the date on which the report is transmitted to it.

4. To submit to the Inter.-American Court of Human Rights, for consideration at its forty-first regular session, the petition from the Inter.-American Commission on Human Rights, this Order, the report presented by the Guatemalan State and the Commission's observations thereon.

2. The August 29, 1998 Order of the Inter-American Court of Human Rights (hereinafter "the Court") whereby it ratified and extended "the measures necessary to protect the life and integrity of Alfonso Cabrera Viagres, María Victoria López, Blanca Cabrera, Carmelinda Cabrera, Teresa Aguilar Cabrera, Olga Maldonado and Carlos Alfonso Cabrera," and called upon the State "to investigate the facts in the matter and report on the situation of the persons in question."

3. The first report presented by the Guatemalan State (hereinafter "the State" or "Guatemala"), dated October 29, 1998, wherein it reported that as a result of a meeting between the Presidential Coordinating Committee for the Executive's Human Rights Policy (henceforth "COPREDEH") and Mr. Santiago Cabrera López, it was agreed that the measures of protection will be as follows: first, constant patrolling "by National Civil Police officers in the vicinity of his residence and [at] his place of work," located in Quetzaltenango; and second, a steady flow of communication between the National Police and Mr. Cabrera López, "so that the proper authorities may stay abreast of any situation that might affect the physical safety of Mr. Cabrera López and his family." Finally, it reported that the measures of protection the Court

* Judge Máximo Pacheco Gómez informed the Court that for reasons of *force majeure* he would not be present for part of the Court's LII regular session, which is why he neither participated in the deliberations on this order nor affixed his name thereto.

had ordered were being provided to the persons in question. The Commission did not submit observations on this report.

4. The January 4, 1999 communication with which the State transmitted its second report and noted that 24-hour security was being provided to the persons in question and that the visits had confirmed that they "ha[d] not been threatened or harmed in any way." The Commission did not submit observations on this report.

5. The State's third report, dated May 6, 1999, wherein it stated that the protective measures consisted of the "daily, round-the-clock patrolling and policing done by National Civil Police officers, working in three shifts," both at the workplace and residence of Mr. Cabrera López and his family. Mr. Cabrera reported that neither he nor anyone else in his family had received any threats.

6. The June 3, 1999 letters from the President of the Court: the first addressed to the State, asking it to "investigate the facts that necessitated adoption of provisional measures, so as to identify those responsible and punish them accordingly"; the second addressed to the Commission, reminding it of its obligation to present its observations on the State's reports within six weeks of their receipt.

7. The Commission's June 18, 1999 observations on the State's third report wherein it pointed out that the protection afforded to the individuals in question was not round-the clock but every three days, and that Mr. Cabrera's next of kin had been threatened.

8. The State's fourth report, dated July 2, 1999, where it reasserted that the protection was round-the-clock and that its recipients had not reported any threats. As for the investigation, Mr. Santiago Cabrera López stated that "he was never threatened and therefore never filed a complaint with the competent authority." In its August 19, 1999 observations, the Commission asserted that the measures of protection and security that the State claimed to have provided were not provided. It also underscored the fact that in the matter of the threats made to his niece, Mr. Cabrera's only contact had been the United Nations Verification Mission's (MINUGUA) human rights officer for the Department of Quetzaltenango.

9. The State's September 9, 1999 communication conveying its fifth report, wherein it reiterated that the security measures described above (*supra* 8) were being taken; it therefore denied the petitioners' assertions. As for the investigation, it pointed out that the competent authorities had not received any complaints of threats and asked that "Mr. Cabrera López go to the Public Prosecutor's Office" to confirm the complaint and supply the facts for the Public Prosecutor's Office to investigate. In its October 21, 1999 observations on this report, the Commission noted that the petitioners had indicated that they were satisfied with the visits made by the State authorities to ensure the effectiveness of the protective measures and were gratified that COPREDEH had intervened to bring the threats to the attention of the Public Prosecutor's Office.

10. Guatemala's sixth, seventh, eighth, ninth and tenth reports -dated November 10, 1999, January 18, March 8, May 11 and October 7, 2000, respectively- wherein the State asserted that the round-the-clock protection provided to Mr. Santiago Cabrera López and his next of kin was ongoing and that the individuals in question had told State officials that they were not being threatened or harmed in any way. As for the investigation, in the sixth report the State noted that Mr. Cabrera López

and COPREDEH had met and agreed that the former would file his complaint on November 2, 2000; "as of the date of this report, the foregoing had not been confirmed." In the Commission's December 17, 1999 observations on the State's sixth report, and its April 28, 2000 observations on the State's eighth report, the Commission made the point that while security was being provided, it was not with the frequency that the State claimed. It added that the petitioners had confirmed that they had not received threats. In its March 14 and July 3, 2000 observations on the State's seventh and ninth reports, respectively, the Commission noted that the beneficiaries of the provisional measures were receiving the protection that the State had described and that they had not received threats.

11. The Commission's August 30, 2000 observations on the State's tenth report, wherein the petitioners stated that "the State has no security strategy for them and is not providing any kind of security or patrol." Finally, they pointed out that "Santiago Cabrera has been without any form of State protection for some months now."

12. The State's eleventh and twelfth reports, dated September 11 and November 3, 2000, respectively, wherein it noted that the round-the-clock measures of protection measures for Mr. Santiago Cabrera López and his next of kin continued. On November 8, 2000, and January 22, 2001, respectively, the Commission submitted its observations on those two reports, wherein it reported that the State was not providing any security or patrol services to either Santiago Cabrera or his next of kin. The Commission went on to say that from time to time a patrol car drove around the area near his home, but never stopped to inquire about the family's safety.

13. The State's thirteenth report, of January 10 and 11, 2001, wherein reference was made to the security measures that the State was providing to Mr. Cabrera and his next of kin, and to the meeting that members of COPREDEH and the National Police had with Santiago Cabrera to "reconfirm the commitment signed by the State of Guatemala to provide him and his family with [those] measures [...]." On March 12, 2001, the Commission submitted its observations wherein it reported that Santiago Cabrera was receiving effective protection from COPREDEH staff and his house was being patrolled. Mr. Cabrera believed that the State "ha[d] been more responsive to his concerns and fears in connection with the Bámaca Case."

14. The February 16, 2001 order of the President of the Court summoning the parties to a public hearing, to be held at the seat of the Court on March 13, 2001.

15. The public hearing held at the seat of the Court on March 13, 2001, where the Commission reported that COPREDEH personnel were calling Santiago Cabrera every week to inquire about his circumstances. It also reported that the National Police were patrolling his residence –but not his work place– on a daily basis. Their routine was to drive by his home and "honk the horn" but not stop to inquire how he was. This was, in the Commission's judgment, unsatisfactory. However, inasmuch as the measures had given Santiago Cabrera some peace of mind, the Commission requested that the Court maintain the measures until the judgment on the merits was executed in full. The Commission did agree with the idea that the State should report every four months, rather than every two, since the threats to Mr. Cabrera had subsided and provided that security continued to be provided. For its part, the State agreed with the "maintenance of provisional measures" and the new timetable

that the Commission proposed for presenting reports. It also pledged to do everything possible to correct the situations reported by the Commission.

16. The Secretariat's March 27, 2001 note, sent on the President's instructions, requesting that the State submit its fourteenth report. On April 18, 2001, the State reported on the meeting that members of COPREDEH, the National Police and Santiago Cabrera had had, wherein the latter had indicated his satisfaction with the security measures that Guatemala provided to him and to his family, both at his residence and his place of work. On June 6, 2001, the Secretariat reminded the Commission to submit its observations on that report.

17. The State's fifteenth report, dated July 5, 2001, wherein it reiterated that COPREDEH officials contacted Santiago Cabrera once a week to inquire about his situation and that of his family. It also reported that the National Police were providing security and patrolling continuously, both at his residence and at his place of work.

18. The Commission's August 9, communication, conveying the petitioners' observations on the State's twenty-fifth (*rectius* fifteenth) report and requested of the Court an "extensive interpretation" of Article 23 of its Rules of Procedure, in order to allow the petitioners to present their own briefs in the case for provisional measures. In the attached brief, it was reported that contrary to what the State had reported, Mr. Cabrera López had received only one call from COPREDEH officials in the period from May to July 2001, and that a National Police patrol car had passed by his home only three times, on July 4, 6, and 23, 2001. At no time did they visit his place of work.

19. The August 29, 2001 order of the Court, wherein it decided that:

1. The Court will admit and hear autonomous requests, arguments, and evidence from the beneficiaries of provisional measures in cases where the application has been presented before it; this will, however, not exempt the Commission from its obligation under the Convention to provide the Court, at its request, with all relevant information.

2. Only the Inter.-American Commission on Human Rights is authorized to provide information to the Inter-American Court of Human Rights during the processing of measures ordered by the Court in cases where no application is pending before it.

CONSIDERING:

1. That Guatemala is a State party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and that on March 9, 1987, it accepted the binding jurisdiction of the Court, in accordance with Article 62 of the Convention.

2. That Article 63(2) of the American Convention provides that in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons" the Court shall adopt such provisional measures it deems pertinent in matters it has under consideration, either at the Commission's request or on its own motion.

3. That Article 1(1) of the American Convention sets forth the duty that States Parties have to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms. The State, therefore, is duty-bound to adopt the measures necessary to preserve the life and personal safety of those persons whose rights may be threatened. This obligation becomes all the more obvious in the case of persons associated with cases filed with the bodies charged with ensuring observance of the American Convention.

4. That, under Article 25(1) of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"):

At any stage of the proceedings 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 such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

5. That the request for provisional measures is in connection with the *Bámaca Velásquez* case currently before the Court.

6. That the States Parties to the Convention must fulfill their conventional obligations in good faith, which is a basic principle of the law of the international responsibility of States (*pacta sunt servanda*).¹ They must also guarantee the effects of such provisions (*effet utile*).²

7. That the Court has repeatedly maintained that the duty to investigate must be carried out seriously, and not as a mere formality destined to be unfruitful.³

8. That under the Court's August 29, 1998 Order, the State is obligated to adopt the measures necessary to protect the life and safety of the persons on behalf of whom the Court ordered provisional measures. The Commission, for its part, is required to present its observations on the measures that the State undertakes, within six weeks of the date of receipt of the corresponding report.

9. That the State's reports and the Commission's observations reveal a number of inconsistencies and differences of opinion concerning the provisional measures adopted and their effectiveness, leaving it to the Court to sort them out and decide whether or not the provisional measures it ordered were carried out.

10. That Guatemala has a duty to investigate the facts prompting this request for provisional measures in order to identify those responsible and punish them

¹ Cf., *inter alia*, *Castillo Petruzzi et al. Case*, Compliance with Judgment, Order of November 17, 1999. Series C No. 59, *consideranda* 4; *Loayza Tamayo Case*. Compliance with Judgment, Order of November 17, 1999. Series C No. 60, *consideranda* 7; and the *James, Briggs, Noel, García and Bethel Cases*, Provisional Measures. Order of June 14, 1998. Series E No. 2, *consideranda* 6.

² Cf., *inter alia*, *Ivcher Bronstein Case*. Competence. Judgment of September 24, 1999. Series C. No. 54, para. 37; and *Constitutional Court Case*, Competence, Judgment of September 24, 1999. Series C. No. 55, para. 36.

³ Cf., *inter alia*, *Durand and Ugarte Case*, Judgment of August 16, 2000. Series C No. 68, para. 123; *Villagrán Morales et al. Case*, Judgment of November 19, 1999, Series C No. 63, para. 226; *Godínez Cruz Case*, Judgment of January 20, 1989. Series C No. 5, para. 188; and *Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, para. 177.

accordingly (*supra*, paragraph 2 under "*Having Seen*"). By its failure to supply information on the investigation of the facts that necessitated adoption of provisional measures –specifically, the threats made against Mr. Santiago Cabrera López' niece– the State has failed to comply with its obligation to investigate.

11. That the purpose of provisional measures in domestic legal systems (domestic procedural law) in general, is to preserve the rights of the litigant parties, thereby ensuring that execution of the judgment on the merits will not be prejudiced by the litigants' actions *pendente lite*.

12. That the purpose of provisional measures under international human rights law is more far-reaching: although they are essentially preventive in nature, they also effectively protect fundamental rights in that they seek to avoid irreparable harm to persons.

13. That Santiago Cabrera has been a witness before this Court and it has been established that there is a danger that warrants the adoption of special measures to guarantee his life and integrity.

14. That a case "*of extreme gravity and urgency*" persists that justifies extension of the provisional measures adopted on behalf of the persons protected by the measures ordered in the Court's August 29, 1998 Order (*supra*, paragraph 2 under *Having Seen*:).

15. That both the Commission and the State must submit their reports and observations within the time period established for that purpose (*infra*, operative paragraph 3).

NOW, 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 Article 25 of the Court's Rules of Procedure,

RESOLVES:

1. To require the State to maintain the provisional measures the Court adopted in its August 29, 1998 Order on behalf of Alfonso Cabrera Viagres, María Victoria López, Blanca Cabrera, Carmelinda Cabrera, Teresa Aguilar Cabrera, Olga Maldonado and Carlos Alfonso Cabrera.

2. To reiterate to the State that it has a duty to investigate the facts in question and to inform the Court of the condition of the persons in question.

3. To require the State of Guatemala that as of the date of notification of this order, it is to file reports on the provisional measures adopted in the instant case every two months, and to require the Inter-American Commission on Human Rights to present its observations on those reports within six weeks of receiving them.

Antônio A. Caçado Trindade
President

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Caçado Trindade
President

Manuel E. Ventura-Robles
Secretary