

**Order of the
Inter-American Court of Human Rights
of November 26, 2007
Provisional Measures regarding El Salvador

Matter of Adrián Meléndez-Quijano *et al.***

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of May 12, 2007, wherein it ordered, *inter alia*:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of March 23, 2007.

2. To request the State to maintain the measures it has adopted, and to adopt forthwith all necessary measures to protect the life and physical integrity of Adrián Meléndez-Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez-García, Estefani Mercedes Meléndez-García, Pamela Michelle Meléndez-García, Adriana María Meléndez-García, Gloria Tránsito Quijano viuda de Meléndez, Sandra Ivette Meléndez-Quijano, Eurípides Manuel Meléndez-Quijano, Roxana Jacqueline Mejía-Torres, and Manuel Alejandro Meléndez-Mejía.

3. To request the State to adopt forthwith all necessary measures to protect the rights to life and personal integrity of Benjamín Cuellar-Martínez, José Roberto Burgos-Viale, and Henry Paul Fino-Solórzano.

4. To request the State to plan and implement the provisional measures ordered herein with the participation of the beneficiaries thereof or their representatives.

[...]

2. The communication of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of August 23, 2007, whereby it informed that petition No. P-242-07, regarding this matter, is under consideration for its determination.

3. The communications of the beneficiaries' representatives (hereinafter "the representatives") of September 26 and November 22, 2007, wherein they submitted their observations on the reports of the State and pointed out, *inter alia*, that:

a) Adrián Meléndez-Quijano has allegedly been subjected to sanctions and arbitrarily deprived of his liberty by the military authorities and that various administrative and judicial proceedings have been started against him. Furthermore, they pointed out that Mr. Meléndez-Quijano has filed several complaints before said authorities. Therefore, they requested the Court to rule on the provisional suspension of all administrative and judicial proceedings started against Major Meléndez-Quijano, either under the ordinary jurisdiction or the special military courts, "as a parallel consequence of the adoption of provisional measures in his behalf," as so far "over four summary proceedings,

two administrative proceedings, and seven proceedings under the military jurisdiction have been started, all of which have been ordered by the National Defense Minister." The many administrative and judicial proceedings referred to above have caused distress to Major Meléndez and his next of kin. This situation has "deprived M[ajor] Meléndez-Quijano not o[n]ly of the material resources which are due to him as a result of his work status as an active-duty officer, but also of essential time to be devoted to [...] his family life." In addition, Major Meléndez-Quijano has been recently diagnosed with a clinical condition of "overstress" at the Mental Health Clinic of the military unit where he has been assigned. In view of the foregoing, the representatives consider that "the actions which have been systematically taken against Major Meléndez by the civilian and military authorities have affected the life and personal integrity of Major Meléndez;"

b) the measures to protect the members of the Meléndez-Quijano family have not been "even partially" adopted, even though the State "has the immediate responsibility for affording protection to Major Meléndez-Quijano and his next of kin." With regard to the protection of Benjamín Cuéllar-Martínez, José Roberto Burgos-Viale, and Henry Paul Fino-Solórzano, they have been afforded protection by a personal security guard since the meeting held on August 27, 2007. Notwithstanding, the security guards assigned to protect the above-mentioned persons "have not been provided with transport means or radio communication equipment, nor have they been given food allowances, which have to be borne by the Human Rights Institute of Central America University [*Instituto de Derechos Humanos de la Universidad Centroamericana, IDHUCA*]." Protection measures "are still a matter over which the State [...] takes unilateral decisions: sometimes alleging reasons relating to its domestic legal system and others, with the excuse of having limited financial or material resources;"

c) "[t]he extreme slowness with which the authorities have acted [...] regarding the adoption of provisional measures, as well as the exclusion of M[ajor] Meléndez-Quijano's next of kin from the decision-making process regarding the design of such measures," are evident as they "only sent a fax to IDHUCA containing the proposal on August 20, 2007." The State agents refused to give a copy of the environment and risk report through representatives of the Program for the Protection of Victims and Witnesses, though such report had been drawn "thanks to the cooperation of the Meléndez family and the confidence they deposited in the police officers and social workers who participated in it;" and

d) the acts which put at risk the beneficiaries' life and integrity have persisted. These have been the victims of such acts as verbal threats, harassment, and pursuits by suspicious vehicles. The threats "have been compounded by the investigation conducted by Intelligence Officers of the National Defense Ministry, including the Chief of the II (Intelligence) Unit of the Joint Staff of the Armed Forces." The beneficiaries have reported the license plate numbers to the Office of the Attorney General of the Republic and to the PNC, but so far no information has been provided in regard thereto. On September 13, 2007 two police investigators went to the headquarters of IDHUCA and stated that they had been appointed the day before.

4. The communication of the Inter-American Commission on Human Rights received on October 26, 2007, wherein it pointed out, *inter alia*, that:

a) regarding the request for the provisional suspension of all administrative and judicial steps taken against Major Meléndez-Quijano, it has been included in the petition filed before the Commission, which is being processed;

b) "it appreciates that the State has afforded protection measures to Benjamín Cuellar-Martínez, José Roberto Burgos-Viale, and Henry Paul Fino-Solórzano, and takes account of the steps taken in order to afford protection measures to Major Meléndez-Quijano and his next of kin." Notwithstanding, the information "does not show that the protection measures regarding the latter have been adopted;"

c) as to the new events involving threats, pursuit by vehicles, and surveillance of residences and places of work, they "show the persistency of a situation of extreme gravity and urgency which make it necessary [...] that the State [...] implement forthwith the protection measures ordered by the Inter-American Court;" and

d) regarding the participation of the beneficiaries in planning and implementing such measures, it appreciates that the State held a meeting with the beneficiaries' representatives and that it later adopted measures in their behalf, and "expects that it acts in a similar manner when adopting the measures required by Major Meléndez-Quijano and his next of kin."

5. The reports of the State of El Salvador (hereinafter "the State" or "El Salvador") received on August 22 and October 23, 2007, wherein it stated, *inter alia*, that:

a) regarding the request made by the petitioners so that all administrative and judicial steps taken against Major Meléndez-Quijano be provisionally suspended, "it is not possible to admit it, as it is in violation of not only [its] domestic legal provisions, but also of the international legal standards [it] has adopted." Furthermore, it "is in violation of the Due Process as a substantive right and legal procedural principle" and it "opposes the principle of due diligence;"

b) the National Civil Police (*Policía Nacional Civil*, hereinafter "the PNC") has taken various steps regarding the adoption of provisional measures and in July 2007 personal protection measures were adopted, according to which a police member from the Important Persons Protection Division was assigned to the protection of José Roberto Burgos-Viale and Henry Paul Fino-Solórzano. Furthermore, it reiterates its commitment to the protection of Benjamín Cuellar-Martínez;

c) the Executive Technical Unit of the Justice Sector, the agency responsible for implementing the Program for the Protection of Victims and Witnesses, has designed protection measures for Major Adrián Meléndez-Quijano and his next of kin, according to the risk assessment based on the monitoring of the beneficiaries' routine and the surveillance of their residence, within the framework of the Salvadoran legal system and according to the budgetary appropriation allocated to such Division. Notwithstanding, though the project was sent to the beneficiaries for their approval on August 20, 2007, they have not yet submitted their opinion about it, which shows their "lack of interest" in the matter;

d) it considers that it can adopt the following measures to comply with the Order: "[i]mplement fixed or stationary security measures by posting a security guard per shift, armed with a long weapon at each residence (two in San

Salvador and one in San Miguel) [...]; [a]ssign six mobile or personal guards (two per person); and provide a radio communication equipment within the Division frequency range in the case of Major Meléndez-Quijano. However, it is not possible to grant the petition regarding the allocation of tracing vehicles, as it does not have this type of vehicles;"

e) the Office of the Attorney General of the Republic (hereinafter "the Office of the Attorney General") has started an investigation into the facts of the case through case files 276-UDAJ-2005 and 90-UDAJ-05. The last step was taken on September 11, 2007. The Office of the Attorney General "has assisted Major Meléndez-Quijano regarding the alleged violation of his rights, when he made a complaint for the crime of 'Deprivation of Liberty by a Government Official or Employee, Public Agent or Authority.'" In view of this, the Office of the Attorney General concluded that the facts complained of did not constitute a crime, but "were the result of a Military offense which was codified and defined[,] whereby a military trial was started." Due to the foregoing, Major Meléndez-Quijano "was deprived of his liberty, but under a thirty-day military arrest imposed as a sanction for the military offense committed." In this regard, the Office of the Attorney General dismissed the complaint as it is not competent to hear cases involving facts, which do not constitute a crime. On the other hand, the investigation into the crime of attempted homicide against Eurípides Meléndez-Quijano, started through case file 5635 UDV-05, is open.

CONSIDERING:

1. That El Salvador has been a Member State to the Inter-American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since June 23, 1978 and that pursuant to Article 62 thereof, it recognized the contentious jurisdiction of the Court on June 6, 1995.

2. That Article 63(2) of the American Convention provides that, "[a]t 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.

3. That pursuant to Article 25 of the Court's Rules of Procedure,

[...]

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

[...]

6. The beneficiaries of provisional measures or urgent measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission on Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives.

4. That the provision contained in Article 63(2) of the Convention sets forth the obligation of the States to adopt the provisional measures ordered by this Court, as pursuant to the basic legal principle on the international responsibility of the State

endorsed by the international case law, the States must comply with their conventional obligations in good faith (*pacta sunt servanda*).¹

5. That by means of Order of May 12, 2007 the Court ordered the State to maintain the measures it has adopted, and to adopt forthwith all necessary measures to protect the life and physical integrity of all the beneficiaries of these provisional measures (*supra* Having Seen clause 1).

6. That the instant case is not pending with the Court for a decision on the merits; therefore, the adoption of provisional measures does not imply a decision on the merits of the dispute between the petitioners and the State. In adopting provisional measures, the Court is merely securing that it may faithfully execute its mandate under the Convention in cases of extreme gravity and urgency that require the adoption of protection measures to avoid irreparable damage to persons.²

7. That the representatives pointed out in their observations that the various administrative and judicial proceedings started against Major Adrián Meléndez-Quijano have deprived him “not o[n]ly of the material resources which are due to him as a result of his work status as an active-duty officer, but also of essential time to be devoted to [...] his family life” (*supra* Having Seen clause 3(a)) and, therefore, they requested the Court to order the State to “provisionally suspend all administrative and judicial proceedings started against the above-mentioned person, either under the ordinary jurisdiction or the special military courts.”

8. That the Inter-American Commission informed that the request filed by the representatives before the Court, regarding the adoption of provisional measures, has been included in a petition filed before the Commission, which is being processed (*supra* Having Seen clause 2 and 4(a)).

9. That in matters regarding provisional measures, the Court may not examine any arguments other than those which are directly and strictly related to situations of extreme gravity and urgency which require the adoption of protection measures to avoid irreparable damage to persons. Any other arguments or facts may only be examined and determined by the Court when considering the merits of contentious cases brought before the Court.³

¹ 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 clause 6; *Matter of Meléndez-Quijano et al.* Provisional Measures regarding El Salvador. Order of the Inter-American Court of Human Rights of May 12, 2007, Considering clause 6; *Matter of Monagas Judicial Confinement Center (“La Pica”)*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 3, 2007, Considering clause 8; and *Matter of Colotenango*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering clause 5.

² Cf. *Case of Raxcacó-Reyes*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, Considering clause 11; *Matter of Carlos Nieto et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2004, Considering clause 10; and *Matters of “El Nacional” and “Así es la Noticia” Newspapers*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of July 6, 2004, Considering clause 13.

³ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 20, 1998, Considering clause 6; *Matter of Castañeda-Gutman*. Provisional Measures regarding Mexico. Order of the Court of November 25, 2005, Considering clause 8; *Case of Juan Humberto Sánchez*. Provisional Measures regarding Honduras. Order of the Court of February 7, 2006, Considering clause 7; and *Matter of Luisiana Ríos et al.* Provisional Measures regarding Venezuela. Order of the Court of July 3, 2007,

10. That the Court considers that in the instant case it is not possible to assess the facts at issue without giving an opinion on the merits of the case, which implies revising the conformity of the facts denounced by the alleged victims to the American Convention. The opinion on the merits of a case submitted to the Court must be issued in the judgment rendered in that case rather than in a decision regarding the adoption of provisional measures. In fact, the latter may imply a prior judgment via an interlocutory proceeding, determining some of the facts submitted to the consideration of the Court and their consequences.⁴ Therefore, under Article 63(2) of the Convention, it is not incumbent upon the Court to order "the provisional suspension of all administrative and judicial proceedings started against Major Adrián Meléndez-Quijano, either under the ordinary jurisdiction or the special military courts," as requested by the representatives (*supra* Having Seen clause 3(a)).

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11. That in accordance with the observations of the representatives and of the Inter-American Commission in that no progress has been made as to the adoption of provisional measures to immediately afford protection to Adrián Meléndez-Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez-García, Estefani Mercedes Meléndez-García, Pamela Michelle Meléndez-García, Adriana María Meléndez-García, Gloria Tránsito Quijano viuda de Meléndez, Sandra Ivette Meléndez-Quijano, Eurípides Manuel Meléndez-Quijano, Roxana Jacqueline Mejía-Torres, and Manuel Alejandro Meléndez-Mejía, the Court takes account of the arguments of the State (*supra* Having Seen clause 5) and reiterates that the State must adopt all such measures as may be necessary to effectively protect the life and physical integrity of all the beneficiaries, as provided by the Court in its Order of May 12, 2007 (*supra* Having Seen clause 1).

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To find inadmissible the request for the provisional suspension of "all the administrative and judicial proceedings started against Adrián Meléndez-Quijano" submitted by the representatives.

Considering clause 9. See also *Case of Cesti Hurtado*. Provisional Measures regarding Peru. Order of the Court of September 11, 1997, Considering clause 5, and *Case of Herrera-Ulloa*. Provisional Measures regarding Costa Rica. Order of the Court of September 7, 2001, Considering clause 8.

⁴ Cf. *Matter of Castañeda-Gutman*. Provisional Measures regarding Mexico, *supra* Note 3, Considering clause 6; and *Matter of Luisiana Rios et al.* Provisional Measures regarding Venezuela, *supra* Note 3, Considering clause 11.

2. To ratify the Order of the Inter-American Court of Human Rights of May 12, 2007.
3. To request the State to maintain the provisional measures it has adopted and to adopt forthwith such other measures as may be necessary to protect the life and physical integrity of Adrián Meléndez-Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez-García, Estefani Mercedes Meléndez-García, Pamela Michelle Meléndez-García, Adriana María Meléndez-García, Gloria Tránsito Quijano viuda de Meléndez, Sandra Ivette Meléndez-Quijano, Eurípides Manuel Meléndez-Quijano, Roxana Jacqueline Mejía-Torres, Manuel Alejandro Meléndez-Mejía, Benjamín Cuellar-Martínez, José Roberto Burgos-Viale and Henry Paul Fino-Solórzano.
4. To request the State to plan and implement the protection measures ordered herein with the participation of the beneficiaries thereof or their representatives.
5. To request the State to continue informing the Inter-American Court of Human Rights, every two months, on the compliance with the measures ordered; to request the beneficiaries of these measures or the representatives thereof to submit their observations on the two-monthly reports of the State within the term of four weeks of the date on which they have been submitted; and to request the Inter-American Commission on Human Rights to submit its observations on such reports of the State within the term of six weeks of the date on which they have been submitted.
6. To serve notice of this Order to the Inter-American Commission on Human Rights, to the representatives of the beneficiaries of these measures, and to the State.

Sergio García-Ramírez
President

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary