

**Order of the
Inter-American Court of Human Rights
of February 2, 2010
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," "the Court" or "the Tribunal") of May 12, 2007, in which it ratified the Order of the President of the Court of March 23, 2007, and ratified the measures adopted in favor 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 widow of Meléndez, Sandra Ivette Meléndez Quijano, Eurípides Manuel Meléndez Quijano, Roxana Jacqueline Mejía Torres and Manuel Alejandro Meléndez Mejía. Also, the Court extended the measures in favor of Benjamín Cuéllar Martínez, José Roberto Burgos Viale and Henry Paúl Fino Solórzano.

2. The Order of the Court of November 26, 2007, through which the Court ratified the Order of May 12, 2007, and required the Republic of El Salvador (hereinafter "the State" or "El Salvador") to maintain the measures regarding the beneficiaries and requested the measures of protection to be planned and implemented with the participation of their beneficiaries and their representatives. Finally, the Court decided to reject as inadmissible the request presented by the representatives of the beneficiaries (hereinafter "the representatives") in the sense of suspending "all the administrative acts and judicial appeals against Mr. Adrián Meléndez Quijano."

3. The Order of the President of the Court of December 18, 2009, through which a public hearing was called to be held January 28, 2010, in order to hear detailed and updated information from the State, as well as the observations of the representatives and of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") about: a) the situation regarding Mr. Adrián Meléndez Quijano and Ms. Gloria de Meléndez and Jacqueline Mejía de Meléndez, and b) the implementation of the provisional measures and the existence of extreme gravity and urgency to avoid irreparable damage to the beneficiaries.

4. The allegations of the parties at the public hearing about the present provisional measures were carried out January 28, 2010, at the venue of the Court.¹

¹ In said hearing, the following persons appeared for the Inter-American Commission: Lilly Ching Soto and Silvia Serrano advisors; for the representatives: Mr. Benjamín Cuéllar Martínez and Henry Paúl Fino Solórzano; and for the beneficiaries of the measures: Adrián Meléndez Quijano, Gloria Tránsito

Considering:

1. That El Salvador is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since June 23, 1978, and, in accordance with Article 62 thereof, recognized the adjudicatory jurisdiction of the Inter-American Court on June 6, 1995.

2. That Article 63(2) of the Convention demands that in order for the Court to provide provisional measures, three conditions must coincide: i) "extreme gravity;" ii) "urgency;" and iii) in order to "avoid irreparable damage to persons." These three conditions must co-exist and must be present in every situation in which the intervention of the Tribunal is requested. In the same way, the three conditions described must persist for the Court to maintain the protection ordered. If one of the conditions has ceased to exist, the Tribunal will evaluate the appropriateness of continuing the protection ordered.²

3. That in accordance with its jurisdiction in the framework of provisional measures, the Court must consider only the arguments that relate strictly and directly with extreme gravity, urgency, and the necessity to avoid irreparable damage to persons. In this way, in order to decide on maintaining the validity of the provisional measures, the Tribunal must analyze if the situation of extreme gravity and urgency that led to the adoption of the measures still exists, or if new circumstances of extreme gravity and urgency merit their maintenance. Any other issue can only be heard by the Court as a contentious case.³

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4. That according to the Orders of the Court of May 12 and November 26 of 2007, the State must, *inter alia*, adopt the provisional measures with the object of: a) protecting the life and personal integrity of the beneficiaries previously pointed out (*supra* Having Seen 1), and b) planning and implementing the measures with the participation of the beneficiaries of the same or with their representatives.

5. That due to that pointed out in the Order of the President of December 18, 2009, and taking into account the information presented by the parties at the public

Quijano Viuda de Meléndez; and for the State: David Ernesto Morales Cruz, Agent and General Director of Human Rights of the Ministry of Foreign Relations; Sebastián Vaquerano, Alternate Agent and Ambassador of the Republic of El Salvador in Costa Rica, and Ms. Tania Camila Rosa, Sub Director of Human Rights of the Ministry of Foreign Relations.

² *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, considering fourteenth; *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Court of November 17, 2009, considering tenth; and *Case of the Rochela Massacre*. Provisional Measures regarding Colombia. Order of the Court of November 19, 2009, considering fourteenth.

³ *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 20, 1998, considering sixth; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)* Provisional Measures regarding Venezuela. Order of the Court of November 24, 2009, considering fifth, and *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Court of November 25, 2009, considering fourth.

hearing held on January 28, 2010, the Court will refer to the following aspects in relation to the implementation of the provisional measures in the present matter.

6. That regarding the facts denounced during the months of October, November, and December of 2009 against Mr. Adrián Meléndez Quijano and Ms. Gloria de Meléndez and Jacqueline Mejía de Meléndez (*infra* Considering 9), the State signaled that it adopted immediate measures, such as: assigning a police agent for the security of Mr. Adrián Meléndez Quijano, providing a police phone number to provide emergency protection, and carrying out police patrol activities in the zones of their residences and work-places of their next of kin, who are also beneficiaries of these measures. Also, the State pointed out that the "Prosecutor General's Office of El Salvador gave a report about two case files of investigations open in relation with the new facts that occurred in the months of October, November, and December of 2009, as well as the designation of a specific official for each case file and the formulation of the corresponding government directions[; n]evertheless, [the Prosecutor General's Office] did not bring forward the information regarding the results [of the investigations]." At the same time, the State "recognize[ed] that there were deficiencies in the investigation of the facts that had given place to the present measures in conformity with the information that [...] was presented by the Prosecutor General's Office of the Republic and [reiterated that it was] ope[n] to any requirement [of] the Court."

7. That regarding the implementation of the measures, the State informed that during the meeting held with the representatives on November 27, 2009, they agreed, *inter alia*, to the following measures of protection that will be implemented beginning February 2010: a) to provide female security personnel with the suitable communication team; b) the Meléndez Quijano family will participate in the selection of the security personnel, as well as in the definition of the plan of security measures, and c) in the case that changes exist in the measures of security, the family will be previously informed by the Ministry of Foreign Relations, and this changes will only be effective with the approval of the family. Also, the State signaled that it will carry out a meeting with high-ranking Ministry officials, with the goal of resolving the problems brought forward by the beneficiaries.

8. That respecting that manifested by the representatives in the public hearing about the payment of logistic expenses of the measures (*infra* Considering 10), the State indicated that it recognizes that "it is not the responsibility of the Meléndez Quijano family to cover the costs derived from the security, hence, the State at no time justifies that it must be done in this manner." Therefore, the State promised to take measures to settle the situation in a short time and will try to make the necessary corrections.

9. That for its part, the representatives informed, *inter alia*, that in the months of October and November of 2009, supposed acts of threat took place against different beneficiaries, among those: a) threats by phone calls to Ms. Gloria de Meléndez; b) threats by email to Mr. Adrián Meléndez Quijano; c) the extraction of various articles from the house of Mr. Eurípides Manuel Meléndez Quijano by two individuals that were seen by neighbors on the roof and entering the house in a violent manner; d) a seizure of Mr. Adrián Meléndez Quijano by two individuals carrying firearms, who demanded Mr. Adrián Meléndez Quijano to give them his gun, they registered him and took his identification documents, as well as verbally threatening him, and e) a man carrying a firearm, a communication radio, and headphones that observed Mr. Adrián Meléndez Quijano while picking up his wife

from her work-place. At the public hearing, the representatives informed that as recently as December 2009, a person was assigned to Mr. Adrián Meléndez Quijano for his protection. Also, they informed that “[t]he last intimidating act was carried out on January 24 [2010], [and that] it had not been denounced due to the short notice of time.” This involved the fact that the daughter of Mr. Meléndez Quijano received an anonymous telephone call. The representatives added that the State has not advanced in the investigation of the latest facts of threats and intimidations, which occurred in the year 2009.

10. That likewise, the representatives recognized the agreements established with the State during the month of November 2009 regarding the granting of permanent protection to the family; nevertheless, such actions have been affected by the lack of funds and resources for said program. In this respect, the beneficiary Adrián Meléndez Quijano and his representatives provided, during the public hearing, that the State has implemented some partial measures, which have not been sufficient or efficient and the risk remains latent. The beneficiaries have had to defray the expenses of the logistics of the security personnel.

11. That the representatives indicated that a present risk continued in the case of the representatives of the beneficiaries, for which they requested the continuation of the assignation of security personnel for Mr. Benjamín Cuéllar Martínez and Henry Paúl Fino Solórzano, contrary to that which had been manifested in the previous briefs regarding the possibility of raising the measures.

12. The Commission observed that there has been an advance regarding the coordination between the State and the beneficiaries. Nevertheless, the Commission warned that three years have passed since the adoption of the provisional measures, and the beneficiaries indicated that they do not have sufficient protection. The Commission considered that the situation has been aggravated due to the fact that certain beneficiaries had been subjected to threats and followings during the last few months and that those under age did not receive any protection. Also, the Commission found it imperative that the State continues informing it regarding the investigations derived from the denounced threats. At the public hearing, the Commission manifested that the obligation to adopt necessary measures in order to protect the beneficiaries falls on the State and that it is unacceptable that the beneficiaries have had to cover the costs of the only agent offered of those that were assigned for their protection. Finally, the Commission took note of the advances in the process of implementation of the measures.

13. That the Tribunal finds it timely to reiterate that provisional measures have an exceptional character, and are ordered having regard to the basic need of protection and, once ordered, must be maintained as long as the Court considers that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to the rights of the persons protected by them subsist.⁴

⁴ *Case of the Constitutional Court. Provisional Measures regarding Peru. Order of the Court of March 14, 2001, considering third; Case of Integrantes del Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP). Plan de Sánchez Massacre. Provisional Measures regarding Guatemala. Order of the Court of July 8, 2009, considering eighteenth and Case of Mack Chang et al. Provisional Measures regarding Guatemala. Order of the Court of November 16, 2009, considering eighteenth.*

14. That with due to the information and observations presented by the parties regarding the actual state of the situation of extreme gravity and urgency, the Tribunal observes that the State implemented transitory measures of protection in favor of Adrián Meléndez Quijano and his next of kin recently in the month of December 2009. Also, the Court finds that actual elements of risk exist that make it necessary to maintain the provisional measures in favor 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 widow of Meléndez, Sandra Ivette Meléndez Quijano, Roxana Jacqueline Mejía Torres, Manuel Alejandro Meléndez Mejía, Benjamín Cuéllar Martínez and Henry Paúl Fino Solórzano.

15. The Court observes that from the manifestations made by the parties, it is seen that concrete agreements exist that were made between them (*supra* Considering 7) for the proper implementation of the provisional measures ordered by the Tribunal, for which the Court considers fair and good to give a rigorous following to the execution of such promises adopted by the State and accepted by the representatives. In this respect, this Tribunal considers it pertinent that the State informs in a periodic, specific, and detailed manner regarding the implementation of these agreements to the Court.

16. That this Tribunal warns that the duty to implement the sufficient and necessary measures for the proper protection of the beneficiaries corresponds to the State in all its scope. These must be applied in an immediate manner as long as they continue to be valid, for which the same must not cease or be suspended for any reason, and the diverse, prevailing circumstances must be taken into account for their effective implementation, which implies offering participation to the beneficiaries or their representatives in the planning of the same.

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17. That through the brief of September 29, 2009, the representatives reiterated that the beneficiary José Roberto Burgos Viale voluntarily relinquished the measures of security implemented by the State beginning during the month of August 2007. At the public hearing, the representatives reiterated this. On the other hand, in the brief of November 30, 2009, as well as in the public hearing, the representatives informed that the beneficiary Lic. Eurípides Manuel Meléndez Quijano, the brother of Mr. Adrián Meléndez Quijano, died due to natural causes on October 14, 2009.

18. That in this respect, the State provided that notwithstanding that Mr. Roberto Burgos Viale relinquished the measures in his favor, the State would be open to offering such service in favor of Mr. Burgos in case that it were requested again by the representatives. The State reiterated its sympathy for the death of Mr. Eurípides Manuel Meléndez Quijano.

19. That based on the aforementioned arguments, the Court considers it opportune to lift the provisional measures adopted in favor of Mr. José Roberto Burgos Viale and Mr. Eurípides Manuel Meléndez Quijano.

Therefore:**The Inter-American Court of Human Rights,**

In the exercise of its powers conferred in Article 63(2) of the American Convention of Human Rights and Articles 27 and 31 of its Rules of Procedure,

Resolves:

1. To rescind the provisional measures in favor of the beneficiaries José Roberto Burgos Viale and Eurípides Manuel Meléndez Quijano, in agreement with that established in Considering paragraph 19 of the present Order.
2. To require the State to maintain and adopt all the measures that are necessary in order to protect the rights to life and personal 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 widow of Meléndez, Sandra Ivette Meléndez Quijano, Roxana Jacqueline Mejía Torres, Manuel Alejandro Meléndez Mejía, Benjamín Cuéllar Martínez and Henry Paul Fino Solórzano.
3. To require the State to continue carrying out the implementation of the provisional measures in common agreement with their beneficiaries or their representatives for the effective protection of their rights and in observance with Considering paragraph 16 of the present Order.
4. To reiterate to the State to continue informing the Inter-American Court of Human Rights each two months regarding the provisional measures adopted, beginning from the notification of this Order, in conformity with Considering paragraph 15 of the present Order, and to require the beneficiaries of these measures or their representatives to present their observations within a time period of four weeks, beginning from the notification of the reports of the State, and to the Inter-American Commission on Human Rights to present their observations to said reports of the State within a time period of six weeks beginning from their reception.
5. To request the Secretary of the Court to notify the present Order to the State, the Inter-American Commission on Human Rights, and to the representatives of the beneficiaries.

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