

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 21, 2003***

PROVISIONAL MEASURES

LILIANA ORTEGA ET AL. V. VENEZUELA

HAVING SEEN:

1. The November 27, 2002 Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") with respect to the Provisional Measures requested by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") in favor of Liliana Ortega, Yris Medina Cova, Hilda Páez (Gilda Páez),¹ Maritza Romero, Aura Liscano (Lizcano),² Alicia de González, and Carmen Alicia Mendoza, in which it decided:

1. To order the State to adopt, without delay, all necessary measures to protect the life and the right to humane treatment of Liliana Ortega, Yris Medina Cova, Hilda Páez (Gilda Páez), Maritza Romero, Aura Liscano (Lizcano), Alicia de González, and Carmen Alicia Mendoza, all of whom are members of the non-governmental organization *Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989* (COFAVIC).

2. To order the State to allow the applicants to participate in planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.

3. To order the State to investigate the facts stated in the complaint that gave rise to the instant measures, with the aim of discovering and punishing those responsible.

[...]

2. The December 12, 2002 brief by the Venezuelan State (hereinafter "the State" or "Venezuela") in which it submitted its first Report on "compliance with the November 27 [2002] Order of [the] Court" in favor of Liliana Ortega *et al.* and it reported that it had sent briefs to the Ministry of the Interior and Justice, to the Public Prosecutor's Office and to the Office of the Ombudsperson, requesting that they "issue orders as appropriate to comply with the Provisional Measures " and that the "Office of the Attorney General of the Republic, [...] report[ed] that Public Prosecutor 44 of the Public Prosecutor's Office of the Judiciary Circuit of the

* Judges Máximo Pacheco Gómez and Carlos Vicente de Roux Rengifo informed the Court that, for reasons of *force majeure*, they would be unable to attend the February 17, 2003 public hearing, for which reason they did not participate in the deliberation and signing of the instant Order.

¹ The request for Provisional Measures filed by the Inter-American Commission refers indistinctly Mrs. Páez as Hilda or Gilda.

² The request for Provisional Measures filed by the Inter-American Commission refers indistinctly to Aura Liscano or Lizcano.

Metropolitan Area of Caracas and National Prosecutor 24 were commissioned" with the aim of complying with the measure set forth in operative paragraph 3 of the Order of the Court in the instant case (*supra* Having Seen 1).

3. The December 20, 2002 observations of the Inter-American Commission on the first report by the State on the Provisional Measures, in which it stated that it "deemed it crucial to promote such measures as may be necessary for full protection of the persons listed by the Inter-American Court in the November 27, 2002 Order," since no official act had been carried out by the State to fully comply with the Provisional Measures.

4. The December 20, 2002 note of the Secretariat of the Court (hereinafter "the Secretariat") in which, under instructions by the President of the Inter-American Court of Human Rights (hereinafter "the President"), it asked the Venezuelan State to submit a report on implementation of the Provisional Measures no later than January 10, 2003.

5. The January 10, 2003 report by Venezuela in which it referred to implementation of the Provisional Measures and it stated that on December 11, 2002 "the Attorney General of the Republic, [...] report[ed] that Public Prosecutor 44 of the Public Prosecutor's Office of the Judiciary Circuit of the Metropolitan Area of Caracas and National Prosecutor 24 were commissioned with the aim of complying with the measure set forth in operative paragraph 3 of the Order of [the] Court."

6. The January 21, 2003 brief by the Inter-American Commission in which it stated "its deep concern, since the second report by the Venezuelan State on January 10, 2003 merely reiterates what it stated in its first report and does not provide any information that demonstrates effective compliance by the State with the Provisional Measures granted by the Court."

7. The request by the Commission, in its January 21, 2003 brief (*supra* Having Seen 6), requesting that "the parties be urgently summoned to a public hearing at its seat during the forthcoming session, with the aim of evaluating compliance by the State with the Provisional Measures" in the *Liliana Ortega et al.* case.

8. The January 24, 2003 Order of the President of the Court, in which, having consulted with all the Judges of the Court, he decided:

1. To summon the State and the Inter-American Commission on Human Rights to a public hearing to be held at the seat of the Inter-American Court of Human Rights of February 25, 2003, from 9:00 hours to 13:00 hours, for the Court to hear their viewpoints regarding the facts and circumstances pertaining to implementation of the Provisional Measures in the cases of *Liliana Ortega et al.*, *Luis Uzcátegui*, and *Luisiana Ríos et al.*

[...]

9. The January 23, 2003 brief by the Inter-American Commission, received at the Secretariat on January 27, in which it asked the Court, *inter alia*, to hear the testimony of *Liliana Ortega* with respect to the Provisional Measures granted in favor of *Liliana Ortega*, *Yris Medina Cova*, *Hilda Páez*, *Maritza Romero*, *Aura Liscano*, *Alicia de González*, and *Carmen Alicia Mendoza* "in the event that [the] Court decides to summon a public hearing during its forthcoming session."

10. The January 27, 2003 note by the Secretariat in which it asked the Commission to submit the object of the requested testimony no later than the 29th of that month, with the aim of submitting said information to the President of the Court, and the January 30, 2003 brief by the Commission in which it submitted the object of the requested testimony.

11. The January 31, 2003 brief by the Secretariat of the Court in which, under instructions by its President, it forwarded to the State the offer of the witness made by the Commission (*supra* Having Seen 9) for it to submit its observations with respect to said offer, and the February 5, 2003 brief by the Venezuelan State in which it said that "the Venezuelan State has no objection to [the witnesses proposed by the Commission] being heard at the time the public hearing is held."

12. The February 6, 2003 Order of the President of the Court, in which he decided:

1. To summon the representatives of the Inter-American Commission on Human Rights and of the State of Venezuela to a public hearing to be held at the seat of the Inter-American Court, commencing at 10:30 hours on February 17, 2003, to hear the testimony of the witnesses summoned and for the Court to hear their viewpoints on the facts and circumstances pertaining to implementation of the Provisional Measures in the cases of Liliana Ortega *et al.*, Luis Uzcátegui, and Luisiana Ríos *et al.*

2. To summon Liliana Ortega to appear before the Inter-American Court of Human Rights, commencing at 10:30 hours on February 17, 2003, to testify on "non-compliance by the State with the Provisional Measures [and on] lack of investigation, lack of police protection in favor of COFAVIC, the sporadic nature of police protection for [her] and threats received since the Provisional Measures were granted."

[...]

13. The public hearing on the instant Provisional Measures held at the seat of the Inter-American Court on February 17, 2003, at which there appeared:

For the Inter-American Commission on Human Rights:

Eduardo Bertoni, delegate;
Carlos Ayala, assistant, and
Juan Carlos Gutiérrez (assistant)

For the State of Venezuela:

Jorge Dugarte Contreras, agent, and
Gisela Aranda, assistant.

14. The testimony of Liliana Ortega, submitted at the public hearing, and summarized as follows:

a) She is a Venezuelan national, a resident of Caracas city, an attorney, a professor, and the Executive Director of COFAVIC, which is "an organization that began its work in the wake of the Caracazo events in 1989; with its work it has documented more than 280 investigations on human rights violations in Venezuela, it litigates cases before the inter-American human rights system, and it also conducts preventive tasks by sensitizing public opinion and developing awareness among organized forms and sectors of Venezuelan civil society."

b) After the *El Caracazo* decision by the Inter-American Court of Human Rights, COFAVIC began to receive a number of threats and acts of harassment that have subsequently increased, especially after the April, 2002 events and in connection with its work as a litigant before the inter-American System. For this reason, it began to suffer a systematic campaign including phone calls, e-mails, and the presence of individuals threatening the life and safety of several of its members.

c) Once, while performing tasks pertaining to its work in Falcón State, COFAVIC's investigative group "was approached by some eight officers of the Armed Police Forces of Falcón State who sought to intimidate them and make them cease the task they were carrying out, which was to gather information and convene the victims of executions by alleged parapolice groups of that State [...]."

d) COFAVIC's activities have been affected by the violence taking place near the area where its offices are located and due to lack of security guarantees. Members of COFAVIC are called murderers and are linked to opposition groups to try to deny legitimacy of the work they have been doing in Venezuela for over 14 years. Next to the Mayor's Office in the Municipality of El Libertador there is a poster of Liliana Ortega with a text that reads: "recognize them as traitors to the Fatherland, beatings."

e) "[S]ince the Provisional Measures, there ha[s] been no meeting with the State of Venezuela [in which] the protection measures [...] request[ed] have been realized." "[P]olice protection [for COFAVIC] has been completely uncertain, [and] even though the Metropolitan Police has done its best to comply with said protection, [...] the Ministry of Interior Relations and Justice and the Ministry of Defense have constantly hindered the possibility of said protection being regular and truly effective."

f) The "evidence of these acts of harassment and intimidation" has been submitted to the Office of the Attorney General of the Republic and to the Public Prosecutor's Office. However, the "Public Prosecutor's Office upholds the prosecutors who were commissioned" and who "in nine months have not moved the investigations forward in a significant manner." On January 30, 2003 they requested from the Office of the Attorney General of the Republic a copy of the files processed regarding the intimidation and harassment against COFAVIC and to date they have received no reply to that brief.

g) They have filed "before the Ministry of Foreign Affairs of the Republic, a brief in which they specif[y] the measures that they believe could improve the security situation of the members of COFAVIC," asking the officers of the Metropolitan Police to be given adequate equipment for them to be able to carry out their task effectively; to take a number of steps to protect the other members of COFAVIC who are covered by the Provisional Measures; to conduct an effective and extensive investigation of the fact to avoid impunity.

h) In Venezuela there is a situation of "clear weakening of [...] guarantees to be able to work." "[I]t is [...] important for the Venezuelan State to give a clear sign of respect for human rights defenders in Venezuela

and to offer the necessary guarantees for non-governmental human rights organizations to be able to fully carry out their tasks.”

15. The oral arguments by the Commission, submitted at the aforementioned public hearing, summarized as follows:

a) The State has placed obstacles to avoid granting of the protection measures requested. “[E]nough time [has passed] to move forward regarding compliance with the measures and to date there has been no willingness to comply. Nine months to proceed with the investigation has been sufficient time to conduct [...] any type of investigation and to date there has been no progress.” The duty of ensuring and protecting human rights cannot be fulfilled with police officers that do not have communication or defense equipment.

b) “[I]t is [...] important [...] that the Agent of the State has, ultimately accepted explicitly that, due to what he has called [...] disorder, interruption, there has been no compliance with the Provisional Measures in the case of Liliana Ortega and the other leading officials of COFAVIC.”

c) Attacks against Liliana Ortega and the other officials of COFAVIC have become continuous and systematic ones against a non-governmental organization due to their function as human rights advocates. Only the person suffering those attacks can determine when protection is sufficient.

d) “[T]here are congressmen of the party in office who have insulted Liliana Ortega in congressional debates, [...] there are members of official circles [...] of the so-called hot corner in downtown Caracas, under the control of the Bolivarian circles, who expose her as a political target for attack in the photographs and identify her with the adjective “*golpista* [one attempting to overthrow the government], recognize them”.

e) The Organization of American States already referred to the issue of human rights advocates by setting forth in General Assembly Order 1818 that it “resolves [...] [t]o reiterate its support for the work carried out, at both the national and regional levels, by human rights defenders; and to recognize their valuable contribution to the protection, promotion, and observance of human rights[;] [t]o deplore acts that directly or indirectly prevent or hamper the work of human rights defenders in the Americas[;] [t]o urge member states to step up their efforts to adopt the necessary measures [...] to guarantee the life, personal safety, and freedom of expression of human rights defenders [and] [t]o invite member states to publicize and enforce the instruments of the inter-American system and the decisions of its bodies on this matter, as well as the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.”

f) The Inter-American Court should find that the Venezuelan State has not complied with the Provisional Measures ordered by the Court, which under the Convention is grave to an unprecedented degree in the inter-American human rights protection system, as it endangers the lives and the right to humane treatment of human rights advocates.

g) “[O]ne of the officials that the State had assigned [to Liliana Ortega] is being tried for acting as a paid assassin in the alleged murder of an opposition leader; the person who will every day have a body guard and who knows her personal life, where she lives and moves, has the right for him to be someone she can trust.”

h) “[P]lanning of these protection measures should also take into account [delivery of] bullet proof vests to COFAVIC staff for their individual protection[;] [...] assignment of [...] motorcycles to move rapidly at the difficult times that some members of the COFAVIC team have faced; [...] establishment of a special metal detector at the entrance to COFAVIC and [installation of] a double security door at COFAVIC’s headquarters with the characteristics and requirements set forth by COFAVIC’s Board of Directors; [...] a national prosecutor of the Public Prosecutor’s Office must be appointed in consultation with the applicants, [...] and the Venezuelan State must be asked to make a statement in favor of respect for and protection of the work carried out by human rights advocates in Venezuela [...].”

16. The oral arguments of the State, made at that same public hearing, summarized as follows:

a) Excess of democracy, the wish to stand out and the desire to subsume oneself within a participatory democracy of the Venezuelan people, have made non-governmental organizations advocating human rights proliferate disproportionately.

b) “It is obvious that doctor Liliana Ortega and her organization COFAVIC have been a matter of concern for the Venezuelan State.” “Quite simply, there has been disorder, interruption, with respect to the precautionary measures and the Provisional Measures specifically or including them under the measure to protect doctor Liliana Ortega’s right to humane treatment and physical safety [...].” “Implementation [...] of the precautionary or provisional measures, [...] is not easy to implement, within the bureaucratic system of our countries and within our idiosyncrasy [...].”

c) “[F]or a precautionary measure or a provisional measure of protection to attain their goal is not an easy matter.” The request for Provisional Measures was not necessary, because precautionary measures were being observed, with some minor difficulties.

d) No Cabinet Minister and no President of an autonomous institution in a country undergoing a crisis such as that faced by Venezuela has the protection that Liliana Ortega requests both for herself and for COFAVIC. Furthermore, the Venezuelan State is not responsible for the fact that COFAVIC’s offices are located at “a place where there are frequent gatherings and even confrontations between supporters of the Government and the opposition.”

e) On December 12, 2002 the Twenty-Fourth national-level Prosecutor assigned to the case held a conversation with Liliana Ortega over the phone, “with the aim of coordinating her appearance before that Prosecutor’s Office for an interview in which she would explain the reasons that generated the Provisional Measures ordered by the Inter-American Court of Human Rights,

as there was the presumption that they were new facts.” The Prosecutor assigned to the case pointed out that Liliana Ortega refused to attend because she deemed it unnecessary and she also stated that she could not “move around in downtown Caracas for any reason because her life was in danger.”

f) “On December 16, 2002 the Twenty-Fourth national-level Prosecutor sent an official letter to the director of COFAVIC requesting detailed information on the new events reported to the inter-American system. The January 20, 2003 reply was a brief stating that on January 6, 2003 Hilda Páez, the President of COFAVIC, personally sent a 34 page brief, as an annex before the Public Prosecutor’s Office, stamped by the Directorate of the General Secretariat, Records Unit. In that brief, citizen Liliana Ortega expressed her gratitude for the motivation shown by the Prosecutor assigned to the case in requesting information on it.”

g) “[...] the proposal [of the Commission] is an expedite, adequate, convenient and necessary alternative [with] joint planning between doctor Liliana Ortega, the people at COFAVIC, the people of the Venezuelan State and the Government to [...] reasonably and fairly comply with the [...] precautionary measures and as a continuation of compliance with the precautionary measures to obviously involve in them, [...] the Provisional Measures ordered by you [the Court].”

17. The documents submitted by the Inter-American Commission at the public hearing held on February 17, 2003, which were five pages with photographs of posters and graffiti made by the “supporters of the government” at various points of the city of Caracas, Venezuela.

18. The documents submitted by the State at the public hearing held on February 17, 2003 which are “documents pertaining to actions carried out by the prosecutors appointed to investigate the case as well as actions by the Venezuelan Ministry of the Interior and Justice, pertaining to the Liliana Ortega *et al.* case.”

19. Resolutions 1818/01 and 1842/02 of the General Assembly of the Organization of American States, in which it decided:

1. To reiterate its support for the work carried out, at both the national and regional levels, by human rights defenders; and to recognize their valuable contribution to the protection, promotion, and observance of human rights and fundamental freedoms in the Americas.

2. To deplore acts that directly or indirectly prevent or hamper the work of human rights defenders in the Americas.

3. To urge member states to step up their efforts to adopt the necessary measures, in keeping with their domestic law and with internationally accepted principles and standards, to guarantee the life, personal safety, and freedom of expression of human rights defenders.

[...]

CONSIDERING:

1. The State ratified the American Convention on August 9, 1977 and, pursuant to article 62 of that Convention, it accepted contentious jurisdiction of the Court on June 24, 1981.

2. Article 63(2) of the American Convention sets forth that, in cases of “extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may, in matters being heard by the Court, adopt such Provisional Measures as it deems pertinent and, in cases not yet brought before the Court, it may act upon a request by the Commission.

3. Pursuant to the provisions of Article 25(1) and 25(2) of the Rules of Procedure of the Court,

[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, 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. Article 1(1) of the Convention sets forth the duty of the States Party to respect the rights and freedoms recognized by that treaty and to ensure their free and full exercise by all persons subject to their jurisdiction.

5. The aim of Provisional Measures, in national legal systems (domestic procedural law) in general, is to protect the rights of the parties to a dispute, ensuring that the judgment on the merits does not suffer detriment due to their actions *pendente lite*.

6. The purpose of urgent and provisional measures, in International Human Rights Law, goes further because, in addition to their essentially preventive nature, they effectively protect fundamental rights, insofar as they seek to avoid irreparable damage to persons.

7. The Court already established, in its November 27, 2002 Order, that the background information submitted by the Commission in its request demonstrated *prima facie* the existence of a situation of extreme gravity and urgency regarding the lives and the right to humane treatment of Liliana Ortega, Yris Medina Cova, Hilda Páez, Maritza Romero, Aura Liscano, Alicia de González, and Carmen Alicia Mendoza³.

8. In light of the facts presented at the public hearing (*supra* Having Seen 15 and 16) and the testimony submitted (*supra* Having Seen 14), the Court deems it necessary to reiterate to Venezuela that it is the responsibility of the State to adopt security measures to protect all persons subject to its jurisdiction, and that this duty is even more evident with respect to those involved in proceedings before the protection bodies of the American Convention.

9. Venezuela has the obligation to investigate the facts that gave rise to the Provisional Measures in favor of Liliana Ortega, Yris Medina Cova, Hilda Páez, Maritza Romero, Aura Liscano, Alicia de González, and Carmen Alicia Mendoza, inasmuch as the State has the obligation to combat impunity by all legal means available since it

³ Cf. *Liliana Ortega et al. vs. Venezuela Case. Provisional Measures*. November 27, 2002 Order of the Inter-American Court of Human Rights, Considering five.

fosters chronic recidivism of human rights violations and total defenselessness of the victims and their next of kin.⁴

10. The States must comply in good faith with their obligations under conventions (*pacta sunt servanda*) as set forth in Article 27 of the 1969 Vienna Convention on Treaty Law, which defines a basic principle of general international law when it states that:

[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. [...]

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising the authority granted by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To find that the State has not effectively implemented the Provisional Measures ordered by the Inter-American Court in its November 27, 2002 Order.
2. To reiterate to the State its request for it to adopt, forthwith, such measures as may be necessary to protect the lives and the right to humane treatment of Liliana Ortega, Yris Medina Cova, Hilda Páez, Maritza Romero, Aura Liscano, Alicia de González, and Carmen Alicia Mendoza.
3. To reiterate to the State its order to allow the applicants to participate in planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.
4. To reiterate to the State its order to investigate the facts stated in the complaint that gave rise to the instant measures, with the aim of discovering and punishing those responsible
5. To order the State and the Inter-American Commission on Human Rights to adopt, no later than March 22, 2003, such measures as may be necessary to establish an appropriate mechanism for coordination and supervision of the aforementioned measures.
6. To order the State to report to the Inter-American Court of Human Rights on measures adopted in compliance with the instant Order, no later than March 1, 2003.
7. To order the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights such observations as it deems pertinent within a week of receiving notice of the report filed by the State.

⁴ Cf. *Bámaca Velásquez Case. Reparations (Art. 63(1) American Convention on Human Rights)*. February 22, 2002 Judgment. Series C No. 91, para. 64; *Bámaca Velásquez Case*. November 25, 2000 Judgment. Series C No. 70, para. 211 and *Loayza Tamayo Case. Reparations (Art. 63(1) American Convention on Human Rights)*. November 27, 1998 Judgment. Series C No. 42, para. 170.

8. To order the State, subsequent to its March 1, 2003 brief (*supra* operative paragraph six) to continue reporting to the Inter-American Court of Human Rights, every two months, on the Provisional Measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations on said reports within six weeks of the date it receives them.

9. To serve notice of this order to the State and to the Inter-American Commission on Human Rights.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary