

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 28, 1996**

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
IN THE MATTER OF THE REPUBLIC OF GUATEMALA**

SERECH AND SAQUIC CASE

HAVING SEEN:

1. The petition of April 12, 1996 and its annexes, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or the "Inter-American Court"), pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter "the American Convention") and Article 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures on behalf of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc, in connection with case No. 11.570 now before the Commission against the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala").

2. That the Commission's request was based on the allegation that the persons mentioned above, all members or relatives of members of the Kakchiquel Presbytery of the Conference of Evangelical Churches of Guatemala (CIEDEG) or persons who have played an active role in the investigation of the murders of CIEDEG ministers Pascual Serech and Manuel Saquic-Vásquez in August 1994 and June 1995 respectively, have been the subject of threats, harassment and attacks by a group of members of the civilian patrols and former military officers in the area, who consider this group to hold anti-army sentiments. The Commission considers that the events constitute a *prima facie* case of urgent and grave danger to these persons' lives and physical integrity.

3. The Order of the President of the Court (hereinafter "the President") of April 24, 1996, in which he decided:

1. To call upon the Government of the Republic of Guatemala to adopt forthwith such measures as may be necessary to protect the lives and physical integrity of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc, and to avoid irreparable damage to them, in strict compliance with the obligation to respect and guarantee human rights, which it undertook in accordance with Article 1(1) of the American Convention on Human Rights.

2. To call upon the Government of the Republic of Guatemala to investigate the events and punish those responsible and to use the means at its disposal to execute the

warrant for the arrest of Víctor Román Cotzál.

3. To call upon the Government of the Republic of Guatemala to report to the Court, every thirty days from the date of notification, on the urgent measures it adopts, and upon the Inter-American Commission on Human Rights to transmit its comments on that information to the Court within fifteen days of its receipt.

4. To submit this Order for the Court's consideration and pertinent effects during its next session.

5. To summon the parties to a public hearing at the seat of the Court on June 27, 1996, at 10:00 a.m., so that the Court may hear their views on the events and circumstances that led to this request for provisional measures and to this Order.

The Order of the President was based on the following considerations:

4. That Article 1(1) of the American Convention sets forth the obligation of the States Parties to respect the rights and freedoms recognized in this treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That the facts presented in this case effectively constitute "a prima facie case of urgent and grave danger to the lives and physical integrity" of the 15 persons named. (underlining in the original)

6. That the fact that the Inter-American Commission has twice requested precautionary measures which "*have not produce the requisite effect of protection, since no proper investigation of the threats has been made by the competent authorities nor has the pending warrant for the arrest of Víctor Román Cotzál been executed, nor have Armando Tucubal, Héctor Cotzál or Hugo Cotzál been prosecuted although those persons stand accused of the murders of two members of CIEDEG, [nor] have other appropriate measures been taken to protect the lives and physical integrity*" of the 15 persons named in the Commission's request, establishes exceptional circumstances which make it necessary to order urgent measures so as to avoid irreparable damage to them.

7. That it is the responsibility of the Government to adopt security measures for all citizens, an undertaking that is all the more crucial in the case of persons involved in judicial proceedings before the organs of the inter-American system for the protection of human rights, the purpose of which is to determine whether or not human rights covered by the American Convention have been violated.

8. That, likewise, the Government of Guatemala has the obligation to investigate the events that led to this request for provisional measures in order to identify those responsible and punish them accordingly, particularly with regard to the alleged explicit threats of reprisals against some of the persons named, on account of their appearance before the Commission at the public hearing on February 22 of this year.

4. The first report from the Government of Guatemala on May 30, 1996, in which it listed the urgent measures taken in compliance with the Order of the President of April 24, 1996 and declared that "*Guatemala has deployed all efforts to investigate the events which it has deemed pertinent within the existing legal framework.*" Moreover, the aforementioned report indicated that the Government had held a meeting on March 26, 1996, which was attended by members of the State institutions and the persons affected, and that "*the latter declared that they did not wish to be assigned personal security since it undermined their independence and freedom of action; that all they wanted was for Víctor Román Cotzál be captured and the threats investigated.*"

5. The Commission's comments of June 14, 1996 on the first report from the Government, in which it considered that the latter had not complied with the President's requirements in his Order of April 24, 1996 and that a situation of

extreme gravity and urgency still existed. In this regard, it stated that "*at least one threat has occurred since the Order of the Court, the investigation of the Ministry of Public Affairs has been slow and ineffective and those accused of harassing the protected persons are still at large.*"

6. The public hearing held on June 27, 1996 at the seat of the Court, which was attended by:

for the Government of Guatemala:

Cruz Munguía Sosa, representative;

for the Inter-American Commission on Human Rights:

David J. Padilla, attorney

Denise Gilman, attorney

Frank Larue, assistant

William Harrell, assistant

The Commission called as a witness Mrs. Blanca Margarita Valiente de Similox whose statement was heard.

At that hearing attention was drawn to the fact, firstly, that the Government had taken measures to protect the lives and physical integrity of the persons named in the Order of the President, that the events were currently under investigation and that orders had been issued to capture those allegedly responsible. Secondly, the Commission maintained that, while it recognized that the Government had taken positive measures, they had been inadequate, especially as regards the duty to investigate the events denounced, which was tantamount to a situation of impunity.

CONSIDERING:

1. That Guatemala is a State Party to the American Convention, which sets forth in its Article 1(1) the obligation of the States Parties to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, and that on March 9, 1987 Guatemala had accepted the jurisdiction of the Court in accordance with Article 62 of the Convention.

2. That Article 63(2) of the American Convention provides 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 the Court has examined the circumstances and events that led to the Order of the President of April 24, 1996, which this Court confirms, considering it to be consistent with the law and the merits of the proceedings.

4. That the Court, having studied the arguments adduced by the Government and the Commission, observes that Guatemala has taken some measures to protect

the persons mentioned in the Order of the President of April 24, 1996. This notwithstanding, the Court considers that the investigations conducted have been neither adequate nor effective.

5. That it is therefore necessary to call upon the Government of Guatemala, as a vital aspect of its protective duty, to take effective measures to investigate the events denounced, guarantee the full independence of the judges, and, where appropriate, to punish those responsible.

6. That the Court underscores that the State has the obligation to investigate any situation in which the human rights protected by the Convention may have been violated. That the obligation to investigate, as well as to prevent and sanction, must be assumed by the State as a legal duty and not merely as a formality.

7. That, in particular, Guatemala has an obligation in every case to guarantee the lives and physical integrity of all persons whose rights may be threatened.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Article 24 of the Rules of Procedure of the Court.

DECIDES:

1. To ratify the Order of the President of April 24, 1996.
2. To call upon the Government of the Republic of Guatemala:
 - a. To maintain the provisional measures on behalf of Blanca Margarita Valiente de Similox, Vitalino Similox, Sotero Similox, María Francisca Ventura Sican, Lucio Martínez, Maximiliano Solís, Bartolo Solís, Julio Solís Hernández, María Magdalena Sunún González, Héctor Solís, José Solís, Gregoria Gómez, Juan García, Eliseo Calel and Víctor Tuctuc.
 - b. That as a vital aspect of its protective duty, it take effective measures to investigate the events and, where appropriate, punish those responsible for them.
3. To call upon the Government of the Republic of Guatemala to continue to report every two months on the provisional measures taken.
4. To call upon on the Inter-American Commission on Human Rights to transmit to the Court its comments on that information not later that one month from the date of its receipt.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Oliver Jackman

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary