

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Luisiana Rios, Armando Amaya, Antonio Jose Monroy, Laura Castellanos and Argenis Uribe v. Venezuela
Doc. Type:	Order (Provisional Measures)
Decided by:	President: Antonio A. Cancado Trindade; Judges: Sergio Garcia-Ramirez; Hernan Salgado-Pesantes; Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli; Carlos Vicente de Roux-Rengifo
Dated:	21 November 2003
Citation:	Rios v. Venezuela, Order (IACtHR, 21 Nov. 2003)
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HAVING SEEN:

1. The November 27, 2002 Order of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) in which it decided:

1. To order the State to adopt, without delay, all necessary measures to protect the life and personal safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe, employees of Radio Caracas Televisión (RCTV).
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 February 20, 2003 Order of the Court, in which it decided:

1. To find that the State ha[d] not effectively implemented the Provisional Measures ordered by the Inter-American Court of Human Rights in its November 27, 2002 Order.
2. To reiterate to the State that it must adopt, forthwith, all necessary measures to protect the lives and personal safety of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, and Argenis Uribe.
3. To reiterate to the State that it must allow participation of the applicants in planning and implementation of the protection measures and that [...] it must inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.
4. To reiterate to the State that it must investigate the facts stated in the complaint that gave rise to the instant measures, with the aim of discovering and punishing those responsible.

[...]

6. To order the State to report to the Inter-American Court of Human Rights, no later than February 28, 2003, on the measures taken to comply with the instant Order.

[...]

3. The September 29, 2003 brief and its annex, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the Inter-American Court, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), 25 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”) and 74 of the Rules of Procedure of the Commission, a request for expansion of provisional measures in the case of Luisiana Ríos et al., in favor of Carlos Colmenares, Noé Pernía and Pedro Nikken, employees of the television station Radio Caracas Televisión (RCTV).

4. The grounds provided by the Commission in its request for expansion of the provisional measures (supra Having Seen 3), summarized as follows:

a. on January 29, 2002 the Commission adopted precautionary measures in favor of “the journalists working for RCTV and GLOBOVISIÓN.” These measures were to be in force six months and were extended for another six months on July 29, 2002 and on March 14, 2003;

b. in its March 14, 2003 decision, the Commission requested that protection be granted to other employees of RCTV and Globovisión, including Noé Pernía, Carlos Colmenares, and Pedro Nikken;

c. the precautionary measures ordered by the Commission to protect the lives and the right to humane treatment of the RCTV journalists were ineffective;

d. 39 complaints were filed before the Public Prosecutor’s Office for threats, harassment, and attacks against “RCTV journalists,” including acts of that nature against Carlos Colmenares, Noé Pernía, and Pedro Nikken. The situation of these three specific persons has worsened;

e. on August 19, 2003 the team of reporters of RCTV’S “El Observador”, formed by reporter Pedro Nikken and cameraman Carlos Comenares, was covering a peaceful demonstration near “Las Acacias”, a residential development in Caracas, called “El Cohetazo” and summoned by Coordinadora Democrática. A police squad from the Office of the Mayor of Libertador Municipality, under orders from Mayor Freddy Bernal, of the ruling party “MVR”, repressed and dissolved the demonstration with tear gas and “long firearms,” dangerously shooting pellets at the demonstrators. Carlos Colmenares was wounded by pellets in his arm and right leg. This was the second time that Pedro Nikken’s “reporting crew” was attacked with firearms, the first attack having occurred on November 12, 2002, as stated by Armando Amaya in his testimony before the Court;

f. on August 21, 2003 RCTV reporter Noé Pernía was “singled out, attacked and verbally threatened” by Lina Ron, a leader of the “Círculos Bolivarianos,” while he was covering a labor union protest by a group of employees of the Office of the Mayor of Libertador Municipality. This threat “is a grave one as it was made by a well-known person, whose ability to influence the Círculos Bolivarianos is widely recognized;” and

g. the facts described above were reported to the Public Prosecutor’s Office of Venezuela with audiovisual support, digitalized photographs, and recordings;

5. The additional grounds set forth by the Commission in its request for provisional measures, to the effect that:

a. “there is a pattern of harassment and acts of aggression and non-protection directed toward the RCTV journalists working on the streets to cover demonstrations and current political topics,” demonstrated “by means of information supplied in connection with the provisional measures granted by [the ... Court] in favor of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, and Argenis Uribe, and during the public hearing” held at the seat of the Court on February 17, 2003;

b. the year 2000 Annual Report of the Special Rapporteur on Freedom of Expression “expressed concern regarding this situation,” yet to date the harassment against journalists has not diminished;

c. the precautionary measures granted by the Commission and their respective extensions have not impeded subsequent aggressions and threats against RCTV employees Carlos Colmenares, Noé Pernía, and Pedro Nikken, who are more exposed to attacks and aggression because they work “on the streets;”

d. to date, the State has not “prosecuted anyone” for the acts of aggression against the RCTV journalists who are protected by the precautionary measures, despite the fact that criminal action crimes in Venezuela must be investigated by the State on its own motion, pursuant to the accusatory criminal system, in which the alleged victim cannot accuse anyone directly before the Judiciary; and

e. the “grave acts” of aggression that took place on August 19 and 21, 2003 demonstrate the existence of a situation of extreme gravity and urgency regarding the lives and the right to humane treatment of Carlos Colmenares, Noé Pernía, and Pedro Nikken, these facts having occurred “within a pattern of continuity of violence, threats, and harassment against journalists in Venezuela.”

6. The October 2, 2003 communication by the Inter-American Commission in which it forwarded the original briefs and 14 annexes pertaining to the Request for expansion of the provisional measures.

7. The October 2, 2003 Order of the President of the Court, in which, after consulting with all the Judges of the Court, he decided:

1. To reiterate the order for the State to adopt, forthwith, all necessary measures to protect the life and the right to humane treatment of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, and Argenis Uribe.

2. To order the State to adopt, forthwith, such measures as may be necessary to protect the life, the right to humane treatment and freedom of expression of Carlos Colmenares, Noé Pernía, and Pedro Nikken.

3. To order the State to allow the beneficiaries to participate in planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered.

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

5. To order the State to report to the Inter-American Court of Human Rights on the measures it has taken to comply with the instant Order, no later than October 16, 2003.

6. To order the Inter-American Commission on Human Rights to submit its comments on the report by the State to the Inter-American Court of Human Rights, within a week of being notified thereof.

7. To order the State, subsequent to its first report (supra operative paragraph five), to continue reporting to the Inter-American Court of Human Rights, every two months, on the measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to said reports within six weeks of receiving them.

[...]

CONSIDERING:

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

2. 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. Pursuant to 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 in that treaty and to ensure their free and full exercise by all persons subject to their jurisdiction.

5. The background information submitted by the Commission in its application (supra Having Seen 3, 4, 5 and 6) demonstrates prima facie the existence of a situation of extreme gravity and urgency regarding the life, the right to humane treatment, and freedom of expression of Carlos Colmenares, Noé Pernía, and Pedro Nikken, employees of the television broadcast station Radio Caracas Televisión (RCTV).

6. The purpose of provisional measures, in the 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 actions by the parties *pendente lite*.

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

8. It is the responsibility of the State to adopt effective security measures to protect all persons under its jurisdiction, and this duty is even more evident with respect to those involved in proceedings before the protection bodies of the American Convention.

9. The Court has examined the facts and circumstances that gave rise to the October 2, 2003 Order of the President (*supra* Having Seen 7), which it ratifies because it finds that it is in accordance with the law and the merits in the proceedings.

10. To date, the State has not submitted the urgent report required by the October 2, 2003 Order of the President regarding measures adopted to effectively ensure the lives, the right to humane treatment and freedom of expression of Carlos Colmenares, Noé Pernía and Pedro Nikken.

11. Non-compliance by the State with the duty to report to the Court is especially grave due to the juridical nature of urgent measures and provisional measures, which seek to prevent irreparable damages to persons in situations of extreme gravity and urgency.

12. The provision set forth in Article 63(2) of the Convention makes it binding for the State to adopt the provisional measures ordered by this Court, because according to the basic principle of law regarding the international responsibility of the State, backed by international case law, the States must comply in good faith with their treaty obligations (*pacta sunt servanda*).

13. The State also has the obligation to investigate the facts that gave rise to the request for provisional measures, with the aim of identifying those responsible and punishing them as appropriate.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To ratify in its entirety the October 2, 2003 Order of the President of the Inter-American Court of Human Rights.

2. To reiterate the order to the State to adopt, forthwith, such measures as may be necessary to protect the life and the right to humane treatment of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe.

3. To order the State to adopt and maintain such measures as may be necessary to protect the life, the right to humane treatment and freedom of expression of Carlos Colmenares, Noé Pernía and Pedro Nikken, employees of the television broadcast station Radio Caracas Televisión (RCTV).

4. To order the State to allow participation of the beneficiaries in planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered.

5. 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.

6. To order the State to report to the Inter-American Court of Human Rights on the measures it has taken to comply with the instant Order, no later than November 28, 2003.

7. To order the Inter-American Commission on Human Rights to submit whatever comments it deems pertinent on the report by the State, within two weeks of being notified thereof by the Inter-American Court of Human Rights.

8. To order the State, subsequent to its first report (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 to said reports within six weeks of being notified thereof by the Court.

9. To notify 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
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary