

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF APRIL 6, 2006**

PROVISIONAL MEASURES REGARDING EL SALVADOR

CASE OF THE SERRANO-CRUZ SISTERS

HAVING SEEN:

1. The Judgment on the merits, reparations and costs delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal") on March 1, 2005 in the case of the Serrano-Cruz Sisters regarding the State of El Salvador (hereinafter "the State" or "El Salvador").

2. The brief of March 27, 2006 and its Appendixes, whereby the *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos (Pro-Búsqueda)* (Association for the Search of Disappeared Children), the *Centro por la Justicia y el Derecho Internacional (CEJIL)* (Center for Justice and International Law) and representatives of the victims and their next of kin (hereinafter "the representatives") submitted to the Inter-American Court, in accordance with Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures "in favor of José Mario Sánchez-González -known as Mario Sánchez-, incumbent General Manager of *Pro-Búsqueda*", so that the Court would call upon the State "to stop any potential deportation action against Mr. Mario Sánchez-González until the submitted request for renewal of temporary residence is decided."

3. The alleged facts and arguments constituting the basis for the request for provisional measures submitted by the representatives (*supra* Having Seen clause No. 2), which are summarized below:

a) on January 1, 2006, Mr. Mario Sánchez, a Nicaraguan national, was hired by *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* (Association for the Search of Disappeared Children) to hold office as General Manager of said association. At that time, he had the migratory condition of temporary resident with work permit, which condition was to expire on

* Judge Diego García-Sayán excused himself from hearing the case of the Serrano-Cruz Sisters, in accordance with Articles 19 of the Statute and 19 of the Rules of Procedure of the Court, by reason of which he did not take part in the passing of the Judgment of said case nor of this Order regarding the request for measures.

January 14, 2006. On February 16, 2006, Mr. Sánchez began "to take action to renew his temporary residence with work permit". He was given a provisional card granting him the migratory condition of "request pending", effective until May 17, 2006. Furthermore, due to the fact that, at present, the Association lacks a Director, Mr. Sánchez assumed this role;

b) on March 23, 2006, Mr. Sánchez-González and Mr. José Laínez, Chairman of the Governing Board of *Asociación Pro-Búsqueda*, received notifications from the *Dirección General de Migración* (General Migration Board) of El Salvador, whereby they were summoned to appear in the aforementioned General Migration Board on March 28, 2006. The purpose of summoning Mr. Sánchez-González was "to inform him that he was charged with the offense of illegally staying in the country and continuing to work without due authorization, pursuant to Articles 6, 29 and 66 of the Migration Law." The purpose of summoning the Chairman of the Governing Board of *Asociación Pro-Búsqueda* was "to inform him that he was charged with the offense of illegally hiring aliens, pursuant to Article 62 of the Migration Law;"

c) *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* (Association for the Search of Disappeared Children) has criticized the measures adopted by the State to comply with the Judgment entered by the Inter-American Court, inasmuch as it considers that said measures do not stay within the parameters established in said decision. Officials from *Pro-Búsqueda* made public statements rejecting the act performed by the State on March 22, 2006, by means of which it intended to comply with the Court's order regarding the state duty to publicly acknowledge its responsibility and redress the damage caused to the victims and their next of kin. The notifications received by Mr. Mario Sánchez and the Chairman of the Governing Board of *Asociación Pro-Búsqueda* summoning them to appear before the General Migration Board "seem to be related to these statements, for they came a day after said statements were made;" and

d) "*Pro-Búsqueda* fears that Mr. Sánchez will probably be deported immediately after attending the meeting to which he was summoned. [Said] deportation would put the work of *Pro-Búsqueda* at risk", and it would also imperil Mr. Sánchez' family life, for he is married to a Salvadoran citizen.

4. In view of the foregoing, the representatives requested the Court:
 - A. To adopt provisional measures in favor of Mr. José Mario Sánchez-González.
 - B. To call upon the Salvadoran State to stop any potential deportation action against Mr. Mario Sánchez-González until the submitted request for renewal of temporary residence is decided.
5. The note of March 27, 2006, wherein the Secretariat of the Court, as instructed by the President of the Court, granted the State and the Inter-American Commission a 24-hour term to submit comments on the aforementioned request for provisional measures.
6. The brief of March 29, 2006 and its Appendixes, wherein the State submitted its comments on the representatives' request for provisional measures (*supra* Having Seen clauses No. 2 and 5). In said comments, El Salvador pointed out, *inter alia*, that on March 28, 2006, Mr. Sánchez appeared before the General Migration and Aliens Board, together with his attorney and the General Judicial-Administrative

Attorney of *Asociación Pro-Búsqueda*, who were granted the right to be heard. On said occasion, the State explained the punishment applicable to Mr. Sánchez, pursuant to Articles 29, 62 and 66 of the Migration Law, "which was exclusively of an economic nature", "and ranged between two dollars, eighty-six cents and one hundred fourteen dollars, twenty-nine cents, so that at no time did personnel at the General Migration and Aliens Board express, in writing or verbally, that the punishment might consist in the expulsion of Mr. Sánchez-González from the country."

7. The brief of March 29, 2006, wherein the Inter-American Commission submitted its comments on the aforementioned request for provisional measures (*supra* Having Seen clauses No. 2 and 5). In said comments, the Inter-American Commission pointed out, *inter alia*, that it had been informed that on March 28, 2006 the potential deportation action "which was regarded by petitioners as the risk factor in this matter" did not take place. Additionally, it expressed that "[a]t this moment, therefore, the conditions for the application of Article 63(2) of the Convention are not met."

8. The brief of April 4, 2006 and its Appendixes, wherein the representatives of the victims and their next of kin requested the Court "to bring the proceedings of the request for provisional measures in favor of Mr. Mario Sánchez to an end." In this respect, they informed, *inter alia*, that Mr. Sánchez "was not deported on March 28, 2006, as was feared by members of *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* (Association for the Search of Disappeared Children)."

CONSIDERING:

1. That El Salvador has been a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") since June 23, 1978 and recognized the compulsory jurisdiction of the Court on June 6, 1995.

2. That Article 63(2) of the 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, in relation to this matter, Article 25(1) and 25(2) of the Rules of Procedure 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, 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. That the provisional measures ordered by the Tribunal must be founded on the existence of a real situation of extreme gravity and urgency and irreparableness of the damage that may be caused to the rights at risk of being infringed.

5. That the main basis for the request for provisional measures submitted by the representatives on March 27, 2006 (*supra* Having Seen clause No. 2) was "the fear of [Association] *Pro-Búsqueda*", that Mr. Mario Sánchez-González, General Manager of said association, could be "deported immediately after attending the meeting to which he [had been] summoned" on March 28, 2008, at the General Migration Board of El Salvador, which "would put the work of *Pro-Búsqueda* at risk" (*supra* Having Seen clause No. 3d). According to the representatives, the notifications received by Mr. Mario Sánchez and the Chairman of the Governing Board of the Association summoning them to appear before the General Migration Board "seem to be related to [...] statements" made by *Pro-Búsqueda* regarding the fulfillment by El Salvador of the Judgment entered by this Tribunal in the case of the Serrano-Cruz Sisters.

6. That the same day the request for provisional measures was submitted, the President of Court called upon the State and the Inter-American Commission to forward, within 24 hours, their comments on the request for provisional measures (*supra* Having Seen clause No. 5).

7. That upon submitting its comments on the request for provisional measures on March 28, 2006, the State expressed that the conditions for the adoption of measures were not met, inasmuch as "at no time was Mr. Sánchez-González informed that he would be subject to deportation to his country of origin, since no punishment other than an economic sanction was applicable to his violations of the Migration Law" (*supra* Having Seen clause No. 6). In this regard, El Salvador furnished a copy of the Record of the Right to be Heard and Submission of Period to File Evidence drawn up that same day, which shows that "[Mr. Sánchez-González and his attorney]" were told that [the former] had infringed Articles 29 and 66 of the Migration Law, since he had extended his temporary residence beyond the stipulated period and had continued to work without authorization; and that a fine would be imposed on him [...]" (*supra* Having Seen clause No. 6).

8. That in its comments on the request for provisional measures the Commission remarked that it had been informed that on March 28, 2006 the potential deportation action "which was regarded by petitioners as the risk factor in this matter" did not take place. Additionally, it expressed that "[a]t this moment, therefore, the conditions for the application of Article 63(2) of the Convention are not met." (*supra* Having Seen clause No. 7).

9. That after the submission of the comments of the State and the Commission on the request for measures, the representatives forwarded a brief whereby they requested the Court "bring the proceedings of the request for provisional measures in favor of Mr. Mario Sánchez to an end" and informed, *inter alia*, that Mr. Sánchez "was not deported on March 28, 2006, as was feared by members of *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* (Association for the Search of Disappeared Children)" (*supra* Having Seen clause No. 8). Furthermore, according to the information received by the Court, the punishment that could be applied to Mr. Sánchez-González for a potential infringement of the Migration Law is of an exclusively economic nature and does not involve deportation.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES:

1. To accept the request of the representatives of the victims and their next of kin in the case of the Serrano-Cruz Sisters to "bring the proceedings of [the] request for provisional measures [submitted by them] in favor of Mr. Mario Sánchez to an end."
2. To give notice of this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims and their next of kin who requested the adoption of provisional measures.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary