

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 4, 2006**

PROVISIONAL MEASURES

**CABALLERO DELGADO AND SANTANA
REGARDING THE REPUBLIC OF COLOMBIA**

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court") of April 16, 1997, in which it decided:

1. To request the State of Colombia [(hereinafter "the State," "the Colombian State," "the State de Colombia" or "Colombia")] to adopt, forthwith, such measures as may be necessary to protect the lives and physical integrity of Gonzalo Arias Alturo, Javier Páez, Guillermo Guerrero Zambrano, Élda González and María Nodelia Parra, and to prevent them from suffering irreparable damage, in strict compliance with the obligation to respect and guarantee human rights, which it undertook, under Article 1(1) of the [American] Convention [on Human Rights] (hereinafter "the American Convention" or "the Convention").

2. To request the State of Colombia that it investigate the acts of intimidation to which the persons mentioned in the preceding operative paragraph were subjected and punish those responsible.

2. The Order of the Court of September 19, 1997, in which it decided:

1. To request the State de Colombia, to [...] submit to the Court information on the situation [...] of Guillermo Guerrero Zambrano, as well as his opinion on the alleged plan to "dismantle" the measures of protection for María Nodelia Parra, reported by the Commission.

2. To request the State de Colombia to take the necessary steps to locate Élda González and verify her situation [...] and include the results of this verification in its next report to the Court.

3. The Order of the Court of June 3, 1999, in which it decided:

1. To lift and terminate the provisional measures ordered on April 16, 1997, for Guillermo Guerrero Zambrano and Javier Páez.

2. To maintain the provisional measures ordered on April 16, 1997, for María Nodelia Parra, Gonzalo Arias Alturo and Élda González Vergel.

3. To request that [...] the State de Colombia submit a detailed account of the measures it has adopted in light of the [...] changes in the situation of Gonzalo Arias Alturo and Élda González Vergel. To further request that the document include specific

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- Judge Oliver Jackman informed the Court that, for reasons beyond his control, he would be unable to participate in the deliberation of this Order.

information on the beneficiaries' involvement in decisions related to implementation of the Court's orders.

4. The briefs of the State of August 24, 1999, September 28, 1999, November 29, 1999, January 28, 2000, April 5, 2000, May 29, 2000, July 27, 2000, December 1, 2000, February 21, 2001, April 26, 2001, June 13, 2001, August 9, 2001, October 10, 2001, December 6, 2001, February 7, 2002, May 2, 2002, July 11, 2002, October 7, 2002, December 2, 2002, January 2, 2003, March 5, 2003, May 5, 2003, August 4, 2003, October 8, 2003, December 12, 2003, February 5, 2004, April 6, 2004, June 7, 2004, August 19, 2004, November 10, 2004, February 2, 2005, June 13, 2005, October 7, 2005, January 19, 2006, and March 24, 2006, in which it indicated, *inter alia*, that:

- (a) María Nodelia Parra had a security system based, *inter alia*, on the presence and protection of two men who carried out escort duties, a vehicle and other logistic elements. The Administrative Department of Security (DAS) was responsible for providing security. The security scheme has always been respected and various difficulties related to the logistic elements and the presence of an escort who was on leave have been overcome. In addition, the Prosecutor General's Office [*Fiscalía General*] opened a preliminary investigation into the threats that the beneficiary allegedly received, and this was in the "early stages, when evidence was being collected." There had been nothing new to report, nor any serious or substantial problems related to Mrs. Parra's security situation;
- (b) Regarding Gonzalo Arias Alturo, the National Penitentiary Institute (INPEC) had been instructed to adopt the necessary measures to ensure his life and physical integrity in the Combita Prison, in the Department of Boyacá. The measures adopted had been effective, according to the beneficiary himself, who had told an independent agency, the Boyacá Regional Prosecutor's Office, that he felt safe and protected by the prison authorities; that he had no "security problems and ha[d] not been the victim of any kind of ill-treatment." On March 2, 2006, Gonzalo Arias Alturo indicated that he agreed that the provisional measures ordered in his favor should be lifted. This statement could be found in a document "sent to the Director of the establishment more than a year ago";
- (c) It has had no information on the whereabouts of Élide González Vergel since 1998 and efforts to obtain such information have been unsuccessful. Consequently, the State requested that the provisional measures granted in favor of this beneficiary should be lifted, because "the absence of any news from her [could] suggest that she wished to remove herself from the sphere of action of both the State and the petitioners." Finally, the State indicated that "if the [beneficiary] should eventually reappear, and if it is considered necessary [...], it saw no reason why a new order for provisional measures in her favor could not be issued";

and requested:

- (d) That its reporting schedule be extended to every six months, owing to the "stabilization of the security situation" of María Nodelia Parra and Gonzalo Arias Alturo.

5. The briefs of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of November 5, 1999, February 1, 2000, March 1, 2000, May 9, 2000, September 7, 2000, January 29, 2001, October 3, 2001, February 16, 2002, September 5, 2002, November 21, 2002, January 9, 2003, February 13, 2003, June 6, 2003, September 8, 2003, November 7, 2003, February 6, 2004, March 9, 2004, May 5, 2004, September 23, 2004, December 14, 2004, April 12, 2005, August 12, 2005, November 14, 2005, March 24, 2006, and April 19, 2006, in which it indicated, *inter alia*:

- (a) That, regarding the security scheme for María Nodelia Parra, it understood that there was no disagreement regarding the need to implement the measures of protection and ensure that they achieved their purpose, but rather there were difficulties in the implementation of the measures ordered. The Commission regretted that, owing to logistic difficulties, the beneficiary's safety had been jeopardized. The Commission also considered that the State had not provided information on the investigation into the threats that María Nodelia Parra had received. In this regard, the Commission insisted on the need to investigate the intervention of the beneficiary's telephone lines, as well as the fact that she had been followed, without any legal authorization, by several individuals; these were presumed to be types of harassment and intimidation;
- (b) Its concern regarding the transfers between different prisons of Gonzalo Arias Alturo, which the State had not reported. However, once the beneficiary had been located, the Commission insisted on the need for Mr. Arias Alturo's statement concerning his security and the inexistence of situations of danger for his life and integrity should be rendered before an authority independent of the prison. In this regard, it indicated that it appreciated the information presented by the State, according to which the Boyacá Regional Prosecutor's Office had conducted an interview with the beneficiary during which he had stated that his "conditions were perfect." The Commission found that the last report presented by the State on March 24, 2006, was "ambiguous" as regards the alleged request to lift the provisional measures in favor of the beneficiary, because this "statement had been made one year previously; that is, in March 2005." Moreover, it was unclear why the adoption of security measures should be seen as contradictory to the exercise of rights by the beneficiary Arias Alturo;
- (c) That it would submit its comments on Élide Gonzalez Vergel when the State had tried to locate her. It also indicated that the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") were in a better position to indicate the steps that should be taken to implement the provisional measures concerning this beneficiary. In addition, it stated that it was not possible to establish a presumption regarding her level of risk or her wishes, because there was no evidence in the file that would allow it to be established that the risk of irreparable damage had been eliminated. Consequently, if the measures were lifted, the Commission considered it would be prudent and necessary to establish the State's obligation to immediately advise the Court of any information that came to its attention about the beneficiary's whereabouts. The parties agreed that the eventual lifting of the measures would not imply a ruling on the beneficiary's situation of danger; a situation that needed to be evaluated when there was news of her whereabouts; and

- (d) That it is important that the State and the beneficiaries, through their representatives, create opportunities for dialogue in order to improve the implementation of the measures of protection.

6. The briefs of the representatives of April 3, 2002, September 3, 2002, November 20, 2002, November 22, 2002, January 8, 2003, January 10, 2003, June 2, 2003, August 29, 2003, November 6, 2003, March 8, 2004, June 15, 2004, January 11, 2005, June 13, 2005, October 10, 2005, November 4, 2005, and April 17, 2006, in which they indicated, *inter alia*, that:

- (a) Regarding the protection scheme for María Nodelia Parra, there had been problems with its implementation, such as the absence of information about changes in her escorts. They also stated that, since the provisional measures had been ordered, events had occurred that appeared to indicate that the situation of danger and threat surrounding María Nodelia Parra and her family persisted. No progress had been made in the investigation seeking to clarify the threats and dangerous acts that María Nodelia Parra and her next of kin had experienced and it had not been possible to identify and punish those responsible. Mrs. Nodelia Parra would remain in danger until the origin and authors of the threats and harassment were identified. Consequently, it was necessary to retain the measures and obtain results as regards the identification of the individuals who took part in the acts of telephone interception and stalking endured by the beneficiary;
- (b) Gonzalo Arias Alturo was in the Combita Prison, in the department of Boyacá, and was satisfied with his security situation. Regarding the contents of the State's report of March 24, 2006, concerning the beneficiary's alleged interest in the lifting of the measures of protection ordered in his favor, it was essential that the State provide a copy of the official record containing this statement. In addition, the State should obtain a statement from him in which he described in detail his reasons for considering that the measures ordered in his favor should be lifted, under conditions that guaranteed the beneficiary's freedom of expression;
- (c) It had not been possible to establish contact with Élide González Vergel and, consequently, no information had been included on her situation; however, it should not be understood that Élide González had decided to waive the measures of protection. Nevertheless, they stated that "if it was considered appropriate, according to the available information, the provisional measures ordered in favor of Elida González could be suspended and their reactivation assessed when there was news of her"; and
- (d) The State's willingness to create opportunities for coordination and monitoring of the provisional measures had not materialized in a periodic and adequate mechanism to achieve this.

CONSIDERING

1. That Colombia has been a State Party to the American Convention on Human Rights since July 31, 1973, and, pursuant to Article 62 thereof, accepted the compulsory jurisdiction of the Court on June 21, 1985.

2. That Article 63(2) of the Convention establishes that in cases of “extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” at the request of the Commission, the Court may adopt such provisional measures as it deems pertinent, in matters that are not yet submitted to its consideration.

3. That Article 25(1) of the Rules of Procedure of the Court establishes that “at 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.”

4. That Article 1(1) of the Convention embodies the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That, under international human rights law, in addition to their preventive nature in that they preserve a juridical situation, the purpose of provisional measures is essentially preventive, since they must protect human rights, inasmuch as they seek to avoid irreparable damage to persons. The measures are applicable provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. In this way, provisional measures become a real jurisdictional guarantee of a preventive nature.¹

6. That the Court, in the Order issued on April 16, 1997 (*supra* Having seen paragraph 1), required the State, *inter alia*, to adopt all necessary measures to protect the life and personal integrity of Gonzalo Arias Alturo, Javier Paez, Guillermo Guerrero Zambrano, Élide Gonzalez and Maria Nodelia Parra and avoid irreparable damage; and to investigate the acts of intimidation that the beneficiaries had endured and punish those responsible for such acts.

7. That the Court, in its Order of June 3, 1999 (*supra* Having seen paragraph 3), lifted and terminated the provisional measures for Guillermo Guerrero Zambrano and Javier Páez. It also requested the State, *inter alia*, to maintain the measures ordered on April 16, 1997 (*supra* Having seen paragraph 1) for María Nodelia Parra, Gonzalo Arias Alturo and Élide González Vergel; to provide information on the measures adopted owing to the changes in the situation of Gonzalo Arias Alturo and Élide González Vergel; and to present specific information on the participation of the beneficiaries in the decisions concerning compliance with the Court’s orders.

8. That, on February 2, 2005, the State indicated, *inter alia*, that “the petitioners have not mentioned the situation of Élide González Vergel for the last five years and no report or request has been received from the beneficiary herself.” On June 10, 2005, the State indicated, *inter alia*, that nothing new had occurred with regard to the situation of Élide González Vergel, so that “her intention to remove herself from the sphere of action of both the State and the petitioners” could be presumed.

¹ Cf. *Matter of the Mendoza Prisons*. Provisional Measures. Order of the Inter-American Court of Human Rights March 30, 2006, fourth considering paragraph; *Matter of the Capital Region Yare I and Yare II Penitentiary Center (Yaré Prison)*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, fifth considering paragraph; and *Matter of the Peace Community of San José Apartado*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 15, 2005, fourth considering paragraph.

Accordingly, the State requested that the provisional measures ordered in favor of Élide González Vergel should be lifted. Moreover, the State indicated that “should Mrs. GONZÁLEZ VERGEL eventually reappear and if was considered necessary [...], it did not see any obstacle to proceeding to order provisional measures in her favor once again.”

9. That in its communication of April 12, 2005, the Commission indicated, *inter alia*, that the “representatives of [Élide] González Vergel were in the best position to express a position on the steps to take in the implementation of the provisional measures”. On August 12, 2005, the Commission stated, *inter alia*, that it was not possible to make a presumption about the situation of danger of Élide González Vergel, or her intention to remove herself from the “sphere of action of the State.” The Commission also stated that, “for different reasons, [...] it would not object to lifting the measures in favor of [Élide] González Vergel. The Commission consider[ed] that the usefulness of measures of protection in the inter-American system depend[ed], to a great extent, on the real possibility that they [could] be implemented.”

10. That, in their brief of June 13, 2005, the representatives indicated, *inter alia*, that “they ha[d] been unable to establish contact with Élide González [Vergel] and, hence, ha[d] not included information on her situation.”

11. That it is essential that provisional measures are maintained fully in force and produce the relevant effects until the Court orders that they be lifted or notifies the State of its decision to this effect.²

12. That provisional measures are exceptional in nature; they are ordered in function of the needs for protection and, once ordered must be maintained, provided 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.³

13. That, from the information presented by the State, the Commission and the representatives, it emerges that the whereabouts of Élide González Vergel have not been known for more than five years. In this regard, the Court observes that the usefulness (*effet util*) of provisional measures depends, to a great extent, on the real possibility that they can be implemented. The parties agree that the eventual lifting of the measures does not imply a ruling on the beneficiary’s situation of danger, which must be evaluated when information is received on her whereabouts. Having examined the information received, the Court considers that it is not possible to continue the provisional measures granted in favor of Élide González Vergel.

14. That the State must provide the Court with evidence of Gonzalo Arias Alturo’s statement of his wishes in relation to whether the provisional measures ordered in his favor should be maintained (*supra* Having seen paragraphs 4(b), 5(b) and 6(b)).

² Cf. *Matter of Ramírez Hinojosa et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, sixth considering paragraph; and *Matter of Liliana Ortega et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of March 1, 2005, tenth considering paragraph.

³ Cf. *Matter of Ramírez Hinojosa et al.* Provisional Measures, *supra* note 2, seventh considering paragraph; and *Matter of Liliana Ortega et al.* Provisional Measures, *supra* note 2, eleventh considering paragraph.

15. That the State must maintain the necessary measures to protect the life and integrity of María Nodelia Parra and Gonzalo Arias Alturo, because the information submitted to the Court allows it to determine that these measures are necessary in order to avoid irreparable damage to the rights to life and personal integrity of these beneficiaries, and because it can be concluded that they are in a situation of danger and of extreme gravity and urgency. Furthermore, both the Commission and the representatives asked the Court to maintain these measures in favor of the said beneficiaries (*supra* Having seen paragraphs 5(d), 6(a) and 6(d)).

16. That the State has the obligation to investigate the facts that gave rise to and justified the maintenance of these provisional measures and, if applicable, identify those responsible and impose the corresponding sanctions, as well as to investigate the harassment, threats and other acts that are alleged to have occurred while these provisional measures were in place.

17. That the provisions of Article 63(2) of the Convention makes it obligatory for the State to adopt the provisional measures ordered by the Court, because, according to a basic principle of the law on the State's international responsibility, supported by international case law, the States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).

18. That the State is obliged to implement the provisional measures ordered by the Court and to submit the required reports, at the times indicated by the latter.

19. That the State, in its brief of June 13, 2005 (*supra* Having seen paragraph 4(d)) requested that the schedule for submitting its reports should be extended to every six months, in view of the "stabilization of the safety situation" of María Nodelia Parra and Gonzalo Arias Aturo.

20. That, in keeping with the presumptions of extreme gravity and urgency, the Court's practice for the submission of State reports in procedures concerning provisional measures establishes that these reports must be submitted at the time established by the Court of every two months.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights for Élide González Vergel in its Order of April 16, 1997, and repeated in its Order of June 3, 1999.

2. To require the State to maintain and adopt the necessary measures to protect the life and personal integrity of María Nodelia Parra and Gonzalo Arias Alturo.

3. To reiterate to the State that it must investigate the facts that gave rise to and justified the maintenance of the provisional measures and, if applicable, identify those responsible and impose the corresponding sanctions.

4. To reiterate to the State that it must allow the beneficiaries to take part in the planning and implementation of the measures of protection and, in general, keep them informed of progress in the measures ordered by the Inter-American Court of Human Rights.

5. To require the State to inform the Inter-American Court of Human Rights, every two months, on compliance with the measures adopted, and to require the beneficiaries of these measures or their representatives to present their observations on the State's bimonthly reports within four weeks of receiving them, and the Inter-American Commission on Human Rights to present its observations on the said reports of the State within six weeks of receiving them.

6. To request the Secretariat to notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries of the measures, and the State.

Sergio García Ramírez
President

Alirio Abreu Burelli

Antônio A. Cançado Trindade

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary