

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

PROVISIONAL MEASURES REGARDING GUATEMALA

CASE OF RAXCACÓ-REYES *ET AL*

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal") passed on August 30, 2004, operative paragraph no. 1 of which sets forth:

1. The State shall adopt, without delay, all measures necessary to protect the life of Ronald Ernesto Raxcacó-Reyes, Hugo Humberto Ruiz-Fuentes, Bernardino Rodríguez-Lara and Pablo Arturo Ruiz-Almengor to avoid hindering proceedings under their respective cases before the Inter-American System of Human Rights Protection.

2. The brief of the State of Guatemala (hereinafter "the State" or "Guatemala") of September 16, 2004, whereby it submitted its first report on the provisional measures ordered by the Court. In that brief, the State argued that:

a) the Presidential Commission on Human Rights (hereinafter "COPREDEH") is making its best efforts before domestic authorities to avoid the execution of the four persons subject to these measures until international proceedings are concluded;

b) two bills have been submitted to and preliminary approved by the Secretary General of the Presidency of the Republic to eliminate the death penalty, in the first case, and to abrogate any specific law related thereto. Both bills are aimed at suspending the enforcement of the death penalty and complying with the American Convention on Human Rights (hereinafter "the American Convention") and the decisions of the Court, and

c) the actions promoted by COPREDEH are aimed at suspending the execution of the death penalty while domestic proceedings are pending regarding requests for pardon in order to suspend or commute convictions by exercising this right.

3. In their comments to the first State report, the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") of

Judge Oliver Jackman informed the Court that, for reasons beyond his control, he would not be able to attend the deliberation and signing of this Order.

September 24, 2004, argued that the State has not reported on any specific steps taken to guarantee the implementation of provisional measures; that the bills mentioned by the State have not been yet subject to legislative discussion and that legislators have recently expressed their reluctance towards abolition of the death penalty in Guatemala.

4. In its comments to the first State report, the Inter-American Commission on Human Rights (hereinafter "the Commission") on October 1, 2004, held that it appreciates the steps taken by COPREDEH to promote legislative initiatives aimed at abolishing the death penalty in Guatemala, but that the bills announced by the Government have not yet been submitted to the legislative power and that the State failed to expressly report on the progress made to comply with the provisional measures ordered.

5. The communication of the Secretary of the Court (hereinafter "the Secretary") of January 18, 2005, whereby, pursuant to the instructions of the President of the Court (hereinafter "the President"), the State was requested to submit its second report on the implementation of the provisional measures without delay. Said request was re-stated by the Secretary through the communication of March 7, 2005.

6. The second State report of March 11, 2005, whereby it was stated that the Secretary of the Presidency of the Judicial Authority notified the First and Second Judges of Criminal Sentence Execution that the aforementioned provisional measures were in force and should be taken into account not to enforce the judgment against the beneficiaries.

7. The comments of the representatives of April 14, 2005, to the second State report and its Appendixes, set forth that:

a) the Forensic Medical Service of the Judicial Authority, after the request of the Second Judge of Criminal Sentence Execution, evaluated the health condition of Mr. Ronald Raxcacó-Reyes, verified that he suffers from muscular and chest pain, and determined that treatment could be covered by the medical center of the penitentiary, even though the beneficiary did not obtain satisfactory results at the center, and

b) regarding the State's refusal to take Mr. Raxcacó-Reyes to a hospital, the representatives succeeded in having a private medical examination carried out, which confirmed the aforementioned health conditions, including breathing problems, pain in the pericardial area upon palpation, movement limitations in the lumbar area, difficulty in performing push-ups and extensions of the spine and lower extremities.

8. The comments of the Commission of April 29, 2005, regarding the second State report, whereby it was argued that mere notice of the provisional measures to the First and Second Judges of Criminal Sentence Execution is not enough for the purposes of full compliance therewith. Consequently, said measures must be adopted through a judicial resolution issued by the respective jurisdictional authorities. Moreover, the Commission stated that there are sufficient grounds for the request of petitioners for the State to guarantee Mr. Raxcacó-Reyes a medical examination at a health facility other than that of the penitentiary.

9. The third State report of May 12, 2005, whereby the State argued that it sent an official communication to the Penitentiary Service Board requesting that all necessary efforts be done to have the required medical examination performed upon Mr. Raxcacó-Reyes, and that on May 11, 2005, the Technical Assistant of the Penitentiary Service Board stated that said examinations would be performed at the National Civil Police Hospital and that Mr. Raxcacó-Reyes would be transferred to such place.

10. The fourth State report of June 2, 2005, and its Appendixes, whereby the State argued that the required medical examinations were performed on Mr. Raxcacó-Reyes on May 16, 2005, and that, as stated by two physicians, Mr. Raxcacó-Reyes is in good health condition.

11. The brief of comments of the representatives of June 8, 2005, to the third and fourth State reports, whereby they argued that "the medical examinations performed upon Mr. Raxcacó-Reyes were not complete or thorough since the main problem associated with his chest pain and breathing condition was not properly or effectively evaluated given the impossibility to perform certain medical tests, especially the effort test," as the medical center lacked the appropriate equipment. The good health condition report was based on X-rays and blood tests.

12. The brief of comments of the Commission of July 22, 2005, to the third and fourth State reports, whereby the Commission stated that the medical examinations performed disregarded the particular circumstances of Mr. Raxcacó-Reyes; therefore, no effort test was performed to verify his breathing condition.

13. The judgment on the merits and reparations issued by the Inter-American Court on September 15, 2005, in the *Case of Raxcacó-Reyes v. Guatemala*, whereby the Court ordered, among other things, that:

[...]

5. The State must amend, within a reasonable time limit, Article 201 of the Criminal Code in force to provide for different and specific crime definitions in order to determine the different forms of kidnapping or abduction on the basis of their characteristics, the seriousness of the events and the circumstances surrounding the crime, with the pertinent provisions as to the different proportional penalties, as well as the acknowledgment of the right of the judicial authorities to individualize the applicable penalties in consistency with the particulars of the event and the author, within a maximum and minimum penalty threshold to be established for each particular crime. Under no circumstances shall said amendment broaden the list of crimes punishable by death before ratification of the American Convention.

6. While the above mentioned amendments are still pending, the State must refrain from applying the death penalty and execute convicted prisoners for the crime of kidnapping and abduction, as set forth in paragraph 132 of [the] Judgment.

[...]

8. The State must vacate the sentence imposed on Raxcacó-Reyes under the judgment delivered by the Sixth Trial Court for Criminal, Drug-trafficking and Environmental Offenses [...] within a reasonable time limit and shall, without the need to conduct a new trial, issue another judgment that shall not, in any way, provide for a death penalty sentence. The State must guarantee that the new sentence is proportional to the nature and seriousness of the crime and consider any mitigating or aggravating factors. In doing so and prior to imposing a new sentence, the parties shall be afforded the opportunity to exercise the right to be heard in open court.

[...]

10. The State must provide Raxcacó-Reyes, free of charge and at national health-care facilities, with his prior consent and for the necessary period of time from the date the notice of [the] Judgment is served upon it, with any medical and psychological treatment that duly qualified specialists might prescribe and which shall comprise provision of medicines.

[...]

15. The obligations of the State within the scope of the provisional measures ordered by this Court in the instant case shall be superseded by, exclusively with respect to Raxcacó-Reyes, the measures ordered in [the] Judgment, from the date the notice of [the] Judgment is served upon it.

[...]

14. The brief of the State of November 8, 2005, whereby the State informed that on October 21, 2005, nineteen convicts escaped from Escuintla high-security prison, also known as "Little Hell." According to the State, one of the persons who escaped was Mr. Hugo Humberto Ruiz-Fuentes, a beneficiary of these provisional measures. Based on the above, Guatemala requested "the SUSPENSION of the [provisional measures] since [...] the State cannot fully guarantee the life and integrity of Mr. Ruiz-Fuentes, as he is not directly under the State's custody."

15. The communication of the Secretary of November 9, 2005, whereby the representatives of the beneficiaries of the provisional measures and the Commission were requested to raise any appropriate comments on the request by the State (*supra* Having Seen clause No. 15).

16. The comments of the Commission of November 16, 2005, whereby the Court was requested to "take into account the information relating to the jailbreak of the beneficiary Hugo Humberto Ruiz-Fuentes; and to declare that once the beneficiary [...] is again under the custody of the State, the government's obligation to protect his life must be deemed fully in force so as not to hinder the corresponding proceedings before the Inter-American System of Human Rights Protection."

17. The brief of the representatives of November 16, 2005, and its Appendixes, whereby they raised their comments on the request filed by Guatemala. In that brief, the representatives indicated that out of the nineteen people who fled from prison, "three have been arrested and three were executed upon arrest, including Mr. Ruiz-Fuentes," a beneficiary of these measures. In that sense, the representatives requested the Court to order the State to immediately carry out an investigation in that regard and to request submission of a thorough report on the circumstances surrounding the re-arrest of and confrontation with Mr. Hugo Humberto Ruiz-Fuentes.

18. The communication of the Secretary of November 18, 2005, whereby, pursuant to the instructions of the President, the State was requested to report no later than November 28, 2005, on "the circumstances of the escape and subsequent death of Mr. Hugo Humberto Ruiz-Fuentes, and the investigations initiated in that respect."

19. The communication of the Inter-American Commission of November 21, 2005, whereby the State was required to submit a thorough report on the circumstances surrounding the death of Mr. Hugo Humberto Ruiz-Fuentes.

20. The brief of the State of November 22, 2005, whereby the State reported that Mr. Hugo Humberto Ruiz-Fuentes "resisted to his arrest during re-capture, taking his

gun from the holster, so that the officers [of the Criminal Investigation Service – SIC-] shot him to death.” The State argued that the National Civil Police was requested to submit an official report on the events to be sent to the Court.

21. The communications of the Secretary of December 22, 2005 and February 10, 2006, whereby, pursuant to the instructions of the President, the State was again requested to submit without delay official information on the death of Mr. Ruiz-Fuentes.

22. The brief of Guatemala of February 21, 2006, whereby the State disclosed its hypothesis of the death of Mr. Ruiz-Fuentes in the sense that it “involved a personal revenge.”

23. The brief of the representatives of March 30, 2006, and its Appendixes, whereby they argued that the State provided different versions of the events involving Mr. Ruiz-Fuentes; therefore, they requested that the Court “order the State to provide an official version” of the death of the beneficiary in order to issue an opinion thereon.

24. The brief of the representatives of April 7, 2006, and its Appendixes, whereby they informed that out of the nineteen people who managed to escape, nine were found by security forces and that re-capture operations were scheduled. Five of the persons who escaped were captured alive, while others were gunned down by security forces upon arrest, apparently as a result of resistance. “The fact that four out of nine persons have found death at the time of arrest reflects an excess in the use of force by the State’s security forces.”

25. The brief of the Commission of April 12, 2006, whereby the Commission expressed its concern in the sense that “the information provided by the State regarding the circumstances surrounding the death of Mr. Hugo Ruiz-Fuentes is conflicting.” Moreover, said information does not reflect a follow up of ‘the hypothesis’ of the case, as required by a wrongful death, or an investigation of the reasons for the conflicting versions of the events.”

CONSIDERING:

1. That Guatemala is a State Party to the American Convention since May 25, 1978, and recognized the contentious jurisdiction of the Court on March 9, 1987.

2. That Article 63(2) of the Convention sets forth that:

2. In 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, given their final and non-appealable nature, pursuant to the provisions of Article 67 of the American Convention, the judgments entered by the Court must be promptly complied with by the State in full.

4. That Article 68(1) of the American Convention sets forth that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any

case to which they are parties.” The obligations imposed by the Convention upon States Parties bound all powers and authorities of the State.

5. That the obligation to comply with the provisions of the Court’s judgment originates in the basic legal principle of international liability of the States, upheld in international precedents, which sets forth that States must fulfill their international obligations under the Convention in good faith (*pacta sunt servanda*) and, as indicated by the Court and Article 27 of the Vienna Convention on the Law of Treaties of 1969, a party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty.¹ Otherwise, the rights embodied in the American Convention would not be effectively protected or would have no *effectiveness* within the domestic jurisdiction of States Parties.

6. That the obligations of the State, as mentioned in these provisional measures, regarding Mr. Ronald Ernesto Raxcacó-Reyes have been replaced by the obligations originated in the Judgment rendered by the Court on September 15, 2005, in the *Case of Raxcacó-Reyes v. Guatemala*.

7. The obligations of the State set forth in these provisional measures regarding Mr. Hugo Humberto Ruiz-Fuentes ceased due to his death.

8. The circumstances in which the death of Mr. Hugo Humberto Ruiz-Fuentes occurred have not been clarified by the State; however, pursuant to the purpose of these provisional measures, this Court must not rule on the alleged excess in the use of force by Guatemalan security forces upon capturing, confronting and shooting Mr. Ruiz-Fuentes.

9. The Court has received no information as to compliance with the provisional measures ordered by the Court regarding Mr. Bernardino Rodríguez-Lara and Mr. Pablo Arturo Ruiz-Almengor.

NOW, THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred upon it by Article 63(2) of the American Convention on Human Rights and Article 25 of the Rules of Procedure of the Court,

DECIDES:

1. To consider the provisional measures adopted to the benefit of Mr. Hugo Humberto Ruiz-Fuentes closed.

2. To require the State to submit a report on the steps taken to comply with the provisional measures adopted to the benefit of Mr. Bernardino Rodríguez-Lara and Mr. Pablo Arturo Ruiz-Almengor, no later than August 21, 2006, and to continue informing the Inter-American Court of Human Rights on compliance with the measures ordered every two months following submission of said report.

¹ Cf. *Case of the Constitutional Court. Monitoring Compliance with judgment*. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering clause No. 5; *Case of "19 Merchants."* *Monitoring Compliance with judgment*. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering clause No. 5; *Case of Ricardo Canese. Monitoring Compliance with judgment*. Order of the Inter-American Court of Human Rights of February 2, 2006, Considering clause No. 5.

3. To request the beneficiaries of the provisional measures or their representatives to submit their comments on the State reports within four weeks after reception thereof and to request the Inter-American Commission on Human Rights to submit its comments on the State reports within six weeks after reception thereof.

4. To order the Secretariat of the Court to serve notice of this Order upon the State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries.

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