

**Order of the
Inter-American Court of Human Rights
of May 12, 2007**

**Provisional Measures
with regard to El Salvador**

in favor of Adrián Meléndez Quijano *et al.*

Matter of of Adrián Meléndez Quijano *et al.*

HAVING SEEN:

1. The petition of the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") and its annexes, received at the Inter-American Court of Human Rights (hereinafter, "the Court", "the Inter-American Court" or "the Tribunal") on March 21, 2007. In this petition, the Commission requested that the Court order provisional measures, in accordance with article 63(2) of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") and article 25 of the Rules of Procedure of the Court (hereinafter, the "Rules of Procedure"). The Commission requested these provisional measures with the objective that the Republic of El Salvador (hereinafter, "El Salvador" or "the State") take the necessary steps to protect the life and personal integrity "of Major Adrián Meléndez Quijano and his family members, as well as his brother and attorney, Eurípides Manuel Meléndez Quijano and his family members".

2. The background for the request for provisional measures brought by the Commission are, *inter alia*, the following:

a) according to the petitioners, the facts referred to (*infra Having Seen* 2(b), 2(c), 2(d), 2(e) and 2(f), and 4) have occurred due to the fact that Major Adrián Meléndez Quijano (hereinafter, "Major Adrián Meléndez Quijano" or "Major Meléndez Quijano) was Chief of the Department of Human Rights of the National Defense Ministry ("Departamento de Derechos Humanos del Ministerio de Defensa Nacional"), where he reported several human rights violations allegedly committed by the Salvadoran Army;

b) that Major Adrián Meléndez Quijano has been subject to threats and pursuits since 2004. Likewise, his wife and daughters "were subjected to exhaustive searches of their persons and vehicles by orders of high-ranking officials when [Major] Meléndez [Quijano] was arrested by order of the Ministry of National Defense in the Special Brigade of Military Security ("Brigada Especial de Seguridad Militar");

c) that in early 2006, Gloria Tránsito Quijano viuda de Meléndez, mother of Major Adrián Meléndez Quijano received threatening phone calls at her residence;

d) that on November 29, 2005, Eurípides Manuel Meléndez Quijano was, "in an apparent robbery attempt, stabbed by two unknown individuals when he was entering his residence". The events were reported to the Attorney General of the Republic under reference number 5625-UDN-05;

- e) that on June 20, 2006, Major Adrián Meléndez Quijano and Eurípides Manuel Meléndez Quijano were the object of pursuit by an unknown vehicle and received phone messages containing death threats. These events were reported to the National Civil Police (“Policia Nacional Civil”); and
- f) that on October 3, 2006, the Meléndez Quijano brothers were pursued by vehicles.

3. The adoption of precautionary measures by the Inter-American Commission on October 10, 2006. These measures were adopted in order to guarantee the life and integrity of Major Adrián Meléndez Quijano, Eurípides Manuel Meléndez Quijano and their family members. On February 28, 2007, a petition was presented before the Commission (No. 242/07) in regards to the foregoing and also requested that the Commission the Court to grant provisional measures, since the State had failed to implement the precautionary measures issued by the Commission. Likewise, the petitioners indicated that they had been subject to threats and harassments after the adoption of the precautionary measures. In light of this situation, the Commission decided, during its 127th Ordinary Period of Sessions, to submit the present request for provisional measures to the Court, because “the State has failed to implement the precautionary measures and the situation of extreme gravity and urgency has persisted”.

4. The basis for the present request for provisional measures, in which the Commission alleged that:

- a) at 2pm on October 26, 2006, a hearing of the Special Brigade of Military Security was convened by the Military Judge of First Instance. Major Adrián Meléndez Quijano was accompanied by his attorneys Eurípides Manuel Meléndez Quijano and Henry Paúl Fino Solórzano of the Human Rights Institute of Central American University (“Instituto de Derechos Humanos de la Universidad Centroamericana”, hereinafter, “IDHUCA”). Mr. Henry Paúl Fino Solórzano’s vehicle was searched, despite the fact that they were in an area controlled by the Command Guard of said Brigade. During the search, a file and other items belonging to IDHUCA were lost. The incident was reported to the military authorities;
- b) on October 26, 2006, Benjamín Cuéllar Martínez, José Burgos Viale, and Henry Paúl Fino Solórzano, attorneys of IDHUCA, received simultaneous threatening messages on their cellular phones. These events were reported to the Attorney General of the Republic on November 7, 2006;
- c) on November 9, 2006 at 6:30 pm, one of Major Adrián Meléndez Quijano’s daughters “observed two unknown men get out of a blue car in front of the family home and signal towards the home[. T]his same event was [also] witnessed by Major Adrián Meléndez Quijano’s wife, who at that moment was leaving in her vehicle and was able to see that the men remained in front of her house”. Afterwards, she reported the incident to the National Civil Police;
- d) on December 4, 2006, Gloria Tránsito Quijano viuda de Meléndez, returned to El Salvador. She and her son began to receive threatening phone calls, and as a result she fled the country on December 27, 2006. Nonetheless, due to the illness of one of her children, Gloria Tránsito Quijano viuda de Meléndez has recently returned to El Salvador;
- e) on December 15 and 16 of 2006, after several days of threatening phone calls late at night and early in the morning Eurípides Manuel Meléndez had a “nervous breakdown” as a result of the constant uncertainty, physical insecurity, and stress that he suffers;

- f) on December 30, 2006, at 4 pm, the left rear window of Eurípides Manuel Meléndez's vehicle was broken while it was parked outside the house where he and his family live;
- g) at 10 am on January 28, 2007, when Major Adrián Meléndez Quijano left his house accompanied by his family, he encountered "a double-cabin pick-up truck of the National Civil Police" (PNC) parked in front of his house. The vehicle followed them until they arrived at their destination;
- h) at noon on the same day, Sandra Ivette Meléndez Quijano, sister of Major Adrián Meléndez Quijano, was "followed by a double cabin pick-up truck for approximately an hour. Although she tried to elude her pursuer several times, she failed. She could not see the license plates due to her nervousness". Moreover, they referred that a similar event had occurred prior to November 5, 2006.
- i) on February 2, 2007, at approximately 10:30 am, unknown individuals grabbed documents from Sandra Ivette Meléndez Quijano's vehicle while she was visiting one of her brothers in San Salvador Hospital;
- j) the telephone calls have persisted during the night in Major Adrián Meléndez Quijano's house. The most recent calls occurred on February 6 and 14 of 2007; and
- k) José Roberto Burgos received telephone calls early in the morning on January 22, 23, and 25 of January in which the caller asked about Major Adrián Meléndez Quijano's case. In addition, on February 11, 2007, he was followed by a vehicle with polarized windows and lacking license plates.

5. The beneficiaries of the provisional measures, according to the Commission, would be the following individuals: Adrián Meléndez Quijano; his wife, Marina Elizabeth García de Meléndez; his daughters, Andrea Elizabeth Meléndez García, Estefani Mercedes Meléndez García, Pamela Michelle Meléndez García, Adriana María Meléndez García; his mother, Gloria Tránsito Quijano viuda de Meléndez; and his sister, Sandra Ivette Meléndez Quijano; as well as Eurípides Manuel Meléndez Quijano; and his wife Roxana Jacqueline Mejía Torres, and their son Manuel Alejandro Meléndez Mejía. The Commission did not include as beneficiaries of the measure the attorneys of IDHUCA Benjamín Cuéllar Martínez and José Roberto Burgos Viale, because even though they have been subject to threats and harassment, these individuals are already beneficiaries of the provisional measures ordered by the Court in the case of *García Prieto and others v. El Salvador*¹.

6. The Commission requests that the Court order the State to:

- a) adopt, without delay, all measures necessary to guarantee the life and personal integrity of the beneficiaries;
- b) investigate in a serious, exhaustive and expedite manner the acts of intimidation, harassment, and threats against the beneficiaries; identify those responsible and impose the corresponding punishment, in order to prevent the recurrence of these events or the occurrence of irreparable damage to the beneficiaries;
- c) report as soon as possible the advances and results of the investigations undertaken to identify and punish those responsible for the events that prompted the request for provisional measures; and

¹ Cf. Matter of Gloria Giralt de García Prieto and others. Provisional Measures. Resolution of the Inter-American Court of Human Rights of September 26, 2006.

d) include the beneficiaries in the design and implementation of the measures.

7. The Order of the President of the Inter-American Court of Human Rights (hereinafter, "the President") of March 23, 2007, in which he ordered, *inter alia*, that the State adopt urgent measures to protect the life and personal integrity of Adrián Meléndez Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez García, Estefani Mercedes Meléndez García, Pamela Michelle Meléndez García, Adriana María Meléndez García, Gloria Tránsito Quijano viuda de Meléndez, Sandra Ivette Meléndez Quijano, Eurípides Manuel Meléndez Quijano, Roxana Jacqueline Mejía Torres, and Manuel Alejandro Meléndez Mejía.

8. The State's communication of April 13, 2007, in which it reported on the implementation of the urgent measures ordered by the President, and indicated that it had communicated with the representatives of the Meléndez Quijano family in order to agree upon the implementation of the mentioned measure. The State scheduled a meeting with the family and their representatives for April 10, 2007. Said meeting took place on April 13, 2007 with authorities of the Ministry of Foreign Affairs, the Executive Technical Unit of the Justice Sector, the National Civil Police, representatives of IDHUCA, Major Adrián Meléndez Quijano, Eurípides Meléndez Quijano and Gloria Tránsito Quijano viuda de Meléndez. In the meeting it was agreed that that protection would be provided by the Victims and Witnesses Division of the National Civil Police. The parties scheduled a meeting between the Division and Major Adrián Meléndez Quijano, attorney Eurípides Manuel Meléndez Quijano, and representatives of IDHUCA for April 16, 2007 in order to determine how to implement the urgent measures.

9. The communication of the representatives of the beneficiaries of said measures (hereinafter "the representatives") of April 25, 2007, received in the Secretariat of the Court, in which they presented their observations with regard to the State's report, and indicated, *inter alia*, that:

a) on April 13, 2007, Sandra Ivette Meléndez Quijano was subjected to monitoring and followed by a vehicle when she was returning to her home in the city of San Miguel. The act was perpetrated by two unknown individuals in a four wheel drive vehicle. The Victims and Witnesses Division of the National Civil Police was informed of the event in a meeting with the family members and IDHUCA on April 20, 2007;

b) on April 13, 2007, a meeting was held in the Chancellor's office among officials of the Ministry of Foreign Affairs, the Victims and Witnesses Division of the National Civil Police, the program for the Protection of Victims and Witnesses of the Executive Unit of the Justice Sector, as well as Major Meléndez Quijano, his mother, his brother, and representatives of IDHUCA. In this meeting the need to create a workgroup composed of representatives of all the institutions involved was emphasized. This workgroup would analyze the risk to the beneficiaries and the measures to be implemented. Meetings have been held on April 16, 17, 20, and 23 of 2007. The Meléndez Quijano family has requested that the Victims and Witnesses Division of the National Civil Police allow them to participate in the selection of escorts, and that they be allowed to access the risk report prepared by the Division;

c) on April 18 and 23 of 2007 Marina Elizabeth García de Meléndez was subjected to monitoring and followed by unknown individuals as she left her workplace. The event was reported to the Victims and Witnesses Division of the National Civil Police;

- d) on April 10, 11, 18, and 25 of 2007, José Roberto Burgos Viale, attorney with IDHUCA, received threatening phone calls from a number identified and others identified only as a "private line"; and
- e) requested that the Court order the State to effectively implement the measures granted.

10. The Commission's communication of April 27, 2007, in which it indicated that it "appreciate[d] the initial acts undertaken in order to implement the Order of the Court. [...] The information provided does not demonstrate that the protective measures have been put into practice. As a result, it awaits concrete information from the State".

CONSIDERING:

1. That El Salvador is a State Party to the American Convention since June 23, 1978 and that, in accordance with article 62 of the Convention, it recognized the contentious jurisdiction of the Court on June 6, 1995.

2. That Article 63(2) of the American Convention establishes that, in "cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may with regard to cases not yet submitted to its consideration, at the request of the Commission, order whatever provisional measures it deems pertinent.

3. That, on the subject of Provisional Measures, article 25 of the Rules of Procedure establishes that:

[...]

2. With regard to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

6. The beneficiaries of urgent measures or provisional measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission of Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives. [...]

4. That article 1(1) of the Convention establishes that a State Party is obliged to respect the rights and freedoms enshrined in the Convention, and to guarantee the free and full enjoyment of these rights for everyone within its jurisdiction. Thus, the State's position as guarantor of Convention rights within its jurisdiction is emphasized. These obligations become even more evident to those individuals currently in proceedings before the supervisory organs of the Inter-American system².

5. That, under International Human Rights Law, provisional measures are not only precautionary in the sense that they maintain a legal situation, but fundamentally protective because they protect human rights, inasmuch as they seek to prevent irreparable damage to individuals. Provisional measures may be applied whenever the

² Cf. *Matter of Gloria Giralte de García Prieto and others*. Provisional Measures. Order of the Inter-American Court of Human Rights of January 27, 2007, fifth considering clause; *Matter of the Communities of Jiguamiandó and Curbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, fourth considering clause; and *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2006, fourth considering clause.

basic requirements of extreme gravity and urgency are met, together with the need to prevent irreparable damage to persons. In this way, provisional measures are transformed into a true jurisdictional guarantee of preventative character³.

6. That the disposition established in article 63(2) of the Convention obligates the State to adopt the provisional measures ordered by this Tribunal, given the basic principle of the law of state responsibility, backed by international jurisprudence, that States must fulfill their treaty obligations in good faith (*pacta sunt servanda*)⁴.

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7. That on October 10, 2006, the Inter-American Commission issued precautionary measures, in which it requested that the State take the necessary steps to protect the life and personal integrity of Major Adrián Meléndez Quijano, Eurípides Manuel Meléndez Quijano, and their families (*supra Having Seen 3*).

8. That this Court finds that, according to the information provided by the Commission, "the State has failed to implement the precautionary measures". The Tribunal also finds that, according to the Commission, Major Adrián Meléndez Quijano, Eurípides Manuel Meléndez Quijano, and their families have continued to be the object of monitoring, threatening phone calls, and pursuit while the precautionary measures have been in force (*supra Having Seen 3 and 4*).

9. That on April 13, 2007, the State reported that it has taken certain steps to fulfill the Order of the President of March 24, 2007 (*supra Having Seen 8*).

10. That, given the information presented by the representatives while the urgent measures issued by the President, some of the beneficiaries of the measures have been the object of monitoring and pursuit (*supra Having Seen 9*), which indicates the persistence of a situation of extreme gravity and urgency, and possible irreparable damage to the rights to life and personal integrity of the beneficiaries of the urgent measures (*supra Having Seen 7*).

11. That this Court deems it necessary to adopt provisional measures, due to the fact that the precautionary measures did not produce the desired effects, and given the information presented by the representatives and the Commission reveals, *prima facie*, that Adrián Meléndez Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth Meléndez García, Estefani Mercedes Meléndez García, Pamela Michelle Meléndez García, Adriana María Meléndez García, Gloria Tránsito Quijano viuda de Meléndez, Sandra Ivette Meléndez Quijano, Eurípides Manuel Meléndez Quijano, Roxana Jacqueline Mejía Torres, and Manuel Alejandro Meléndez Mejía are in a situation of extreme gravity and urgency, and that their lives and personal integrity

³ Cf. Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison). Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2007, fourth considering clause; Matter of the "*Pueblo Indígena Kankuamo*". Provisional Measures. Order of the Inter-American Court of Human Rights of January 30, 2007, fifth considering clause; and Case of the Miguel Castro Castro Prison Provisional Measures. Order of the Inter-American Court of Human Rights of January 30, 2007, sixth considering clause.

⁴ Cf. *Case of Raxcacó Reyes*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 2, 2007, fifth Considering; Matter of *Pueblo Indígena Kankuamo*. Provisional Measures, *supra* note 3, eighth "Considering"; and Matter of *Giraldo Cardona*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 29, 2006, eighth "Considering".

are threatened and gravely jeopardized. That The standard of *prima facie* assessment of a case and the application of presumptions due to the need for protection have, on different occasions, led this President and the Court to order measures⁵.

12. That the Inter-American Commission did not request the adoption of provisional measures on behalf of Benjamín Cuéllar Martínez, José Roberto Burgos Viale, and Henry Paul Fino Solórzano, lawyers of IDHUCA and representatives of the beneficiaries of the present provisional measures, (*supra Having Seen* 5). Taking into account the information provided by the Commission in its petition (*supra Having Seen* 4(a), 4(b) and 9(d)) reveal that they have been the object of threats and pursuit in the present matter, this Court considers that the State should provide them with necessary protection, in conformity with the Order which ordered the State to guarantee their rights to life and personal integrity.

13. That the State shall maintain and immediately adopt the measures necessary to protect the life and integrity of the beneficiaries of the present provisional measures (*supra Having Seen* 7 and *Considering* 11 and 12).

14. That the State shall, with the participation of the beneficiaries of this Order or their representatives, continue to take appropriate steps to plan and implement the measures ordered in the present Order, such that the measures may be diligently and effectively executed.

15. That the case that originated the present request for provisional measures is not before the Court to determine its merits, although it refers to a petition presented before the Inter-American Commission under reference No. 242/07 (*supra Having Seen* 3). The adoption of provisional measures does not imply a decision as to the merits of the controversy between the petitioner and the State. In adopting provisional measures, this Court is only ensuring that the Tribunal can faithfully perform its mandate relative to the Convention in cases of extreme gravity and urgency that require protective measures to prevent irreparable harm to persons.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with the authority vested in the Court by Article 63(2) of the American Convention and Articles 25 and 29 of the Rules of Procedure,

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of March 23, 2007.

2. To order the State to maintain the measures that it has already adopted, and that it immediately adopt the measures necessary to protect the life and integrity of Adrián Meléndez Quijano, Marina Elizabeth García de Meléndez, Andrea Elizabeth

⁵ Cf. Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison). Provisional Measures, *supra* note 3, eighth considering clause; *Matter of Gloria Giralte de García Prieto and others*. Provisional Measures, *supra* note 1, eighth considering clause; and *Case of the Plan de Sánchez Massacre*. Provisional Measures. Order of the Inter-American Court of Human Rights of November 25, 2006, eleventh considering clause.

Meléndez García, Estefani Mercedes Meléndez García, Pamela Michelle Meléndez García, Adriana María Meléndez García, Gloria Tránsito Quijano viuda de Meléndez, Sandra Ivette Meléndez Quijano, Eurípides Manuel Meléndez Quijano, Roxana Jacqueline Mejía Torres, and Manuel Alejandro Meléndez Mejía.

3. To order the State to adopt, without delay, the necessary measures to protect the rights to life and personal integrity of Benjamin Cuéllar Martínez, José Roberto Burgos Viale and Henry Paul Fino Solórzano.

4. To order the State, with the participation of the beneficiaries or their representatives, continue to take the appropriate steps to plan and implement the measures ordered by the present Order, such that the measures may be diligently and effectively executed, and, in general, that the State keep the beneficiaries informed about the progress of their implementation.

5. To order the State to continue to submit every two months reports to the Inter-American Court of Human Rights with regard to the fulfillment of the measures adopted; to order the beneficiaries or their representatives to present their observations to the State's reports within four weeks of receipt of each report; and to order the Inter-American Commission on Human Rights to present its observations to the State's reports within six weeks of receipt of each report.

6. To serve the present Order upon the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these measures, and the State.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary