

**Order of the
Inter-American Court of Human Rights
of July 3, 2007
Request for Provisional Measures regarding Venezuela

Matter of Luisiana Ríos *et al.***

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Court") of November 27, 2002, in which, following a request from the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), it ordered the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") to adopt provisional measures to protect the life and personal integrity of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe, employees of Radio Caracas Televisión (RCTV).¹ The request related to a petition pending before the Commission at that time.

2. The Orders of November 21, 2003, September 8, 2004, and September 12, 2005, by which, as a result of subsequent requests for expansion of the said provisional measures presented by the Commission in relation to a petition that it was processing at that time, the Court expanded the provisional measures ordered² (*supra* Having seen paragraph 1). These measures are in force at the present time so that, currently, the State has the obligation to:

...[A]dopt, forthwith, all necessary measures to protect the live and personal integrity of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Carlos Colmenares, Noé Pernía and Pedro Nikken, as well as the freedom of expression of the latter three.

...[A]dopt, forthwith, such measures as may be necessary to protect the live, safety, and freedom of expression of all the journalists, management, and employees of the social communication medium, Radio Caracas Televisión (RCTV), as well as those who are in the facilities of the said social medium or who are associated with the journalistic activities of RCTV.

[...A]dopt, forthwith, such measures as may be necessary to protect the perimeter of the offices of the social communication medium, Radio Caracas Televisión (RCTV).

[...]investigate the facts that gave rise to the provisional measures and their expansion in order to identify and punish those responsible.

¹ Cf. *Matter of Luisiana Ríos et al.. Provisional Measures with regard to Venezuela*. Order of the Inter-American Court of Human Rights of November 27, 2002.

² Cf. *Matter of Luisiana Ríos et al.. Provisional Measures with regard to Venezuela*. Orders of the Inter-American Court of Human Rights of November 21, 2003, September 8, 2004, and September 12, 2005.

[...]allow the beneficiaries of the measures of protection or their representatives to participate in the planning and implementation of these measures and [...], in general, [...] keep them informed about progress in the measures ordered by the Inter-American Court of Human Rights.

3. The reports submitted by the State and the corresponding observations presented by the Commission and the representatives of the beneficiaries, in relation to the provisional measures ordered by the Court (*supra* Having seen paragraphs 1 and 2).

4. The Order of the Court of January 24, 2007, in which it found that the request for "expansion of the provisional measures" of January 22, 2007, submitted by the beneficiaries of the provisional measures and their representatives was inadmissible, "because the persons who submit[ted] it did not have the required legal standing to present it".

5. The application against Venezuela submitted by the Inter-American Commission on April 20, 2007, concerning the case of Luisiana Ríos *et al.* (No. 12,441).

6. The notes of May 21, 2007, from the Secretariat of the Court (hereinafter "the Secretariat"), notifying the said application to the parties.

7. The brief of May 26, 2007, received by the Secretariat by e-mail the same day, together with the appendixes received two days later, in which eight persons,³ seven of whom are alleged victims identified in the application (*supra* Having seen paragraph 5),⁴ submitted a request for the adoption of provisional measures. In the request they also state[d] that it [was] submitted by "the other journalists, personnel and management of [RCTV] [...], acting on [their own] behalf and also on behalf of and in representation of other the other persons, journalists, management, and the other personnel working for RCTV." In this request they stated, *inter alia*, that:

- (a) The applicants have legal standing to present the request "as journalists, management and personnel of RCTV[, because they are alleged] victims and petitioners in a case" before the Court;
- (b) Following the last order on expansion of the provisional measures ordered by the Court on September 12, 2005, "new and subsequent facts [allegedly] occurred, that augmented as of December 28, 2006." They pointed out that these facts referred to "the formal announcement of the shut-down of the activities of RCTV owing to the non-renewal of the license of this social communication medium; actions taken by the State to formalize the decision to be applied at midnight on May 27, 2007; the rejection of all the measures of judicial protection taken by the national authorities; [the precautionary ruling issued by the Constitutional Chamber of the Supreme Court of Justice on May 25, 2007], depriving RCTV of [...] its assets, and placing these under the control and for the use of the new television station created by the State (TEVES) to occupy the RCTV VHF frequency";
- (c) "The recent actions of the State [...] entailed a renewed failure to comply with its international human rights obligations[, since] they directly and intentionally contravened the conclusions and recommendations of the Commission in its Report based on Article 50 of the Convention and, consequently, the claims submitted in the Commission's application, [exposing the petitioners] to greater damage than that already caused [them] in a virtually irreparable manner";

³ Luisiana Ríos, Isabel Mavarez, Isnardo Bravo, David Pérez Hansen, Antonio Monroy, Javier García Flores, José Pernalete and Eduardo Sapene.

⁴ José Pernalete is not an alleged victim in the application mentioned in paragraph 5 of this Order.

- (d) "On March 29, 2007, the Minister of the Public Power for Telecommunications and Informatics notif[ied] Communication No. 0424, of a merely declarative nature, to RCTV; it confirmed the decision of the National Executive to declare the termination of the license"; [...] "however, it deliberately omitted Article 3 of [Decree 1,577], which recognizes the right to an extension for a further 20 years to license holders who respect the Law in the exercise of their rights as license holders";
- (e) "The declarations of the [...] Minister of the Public Power for Telecommunications and Informatics confirmed that the National Executive's decision and the instructions [...] given by the President of the Republic to [the said] Minister were designed to prevent [...] RCTV from continuing to operate as an free VHF television station as of May 28, and [allegedly] was an political sanction of its independent and critical editorial line;
- (f) "The real reason [...] for the decision [...] not to renew the license was to penalize the exercise of freedom of expression by the management, journalists and other personnel";
- (g) "The announcement and [...] the formal communication that the elimination of RCTV was merely pending expiry of the allotted time" was a general and imminent threat to the freedom of expression of the those who work in the area of social communication; also, "it was a violation of the right to work of the said employees, as well as [a violation] of the right of society to receive information freely";
- (h) The alleged "threats and governmental decisions concerning an immediate shut-down on May 27 this year [...] also harmed the mental and moral integrity of the employees of RCTV." The "threat does not terminate there, but has an impact on all society." These "threats [...] contradict (or at least clearly ignore) the opinion of the [Commission] on the adverse effects of the annulment and/or non-renewal of the license on the exercise [of the] right to freedom of expression [of the] victims [of the] case currently [...] before the Inter-American Court and which previously resulted in the adoption [...] of provisional measures, which had been ordered for [their] protection, the expansion of which [is requested] urgently in the [abovementioned brief];
- (i) The "decision of the State to close down RCTV through the non-renewal of its license and the [alleged] lack of judicial protection [...] places [the beneficiaries] in a situation of extreme gravity and urgency that requires the intervention of the international judicial protection organ, to avoid irreparable damage to them, to the other RCTV journalists and to Venezuelan society. [...] The Court should therefore adopt measures to preserve the rights of the parties in dispute, ensuring that the judgment on merits is not prejudiced by their actions *pendente lite*," and
- (j) The provisional measures "requested of [the] Court [would] also irreplaceably fulfil a protective objective. In that context, the Court's provisional measures [would be] the only and final legal remedy provided [to them] by the Convention to protect [their] human rights in the face of the [alleged] imminence of their being violated."

In this brief, the representatives asked the Court to order the State to take the following provisional measures:

- (a) That, in order not to introduce any changes in the situation, it refrain from any decision or act that would result in preventing RCTV from continuing to operate normally [...] until the case has been processed before the Court [...];
- (b) That, should measures such as the shut-down of RCTV transmissions and the seizure of its assets by the State have been executed already, it order the State to re-establish the situation until the case has been processed before the Court [...], so that RCTV [...] can continue to operate normally [...];
- (c) That it refrain from threatening or carrying out against the said station, as well as against all the journalists, management, shareholders and employees of this medium [...], any form or act of arbitrary cancellation or non-renewal of the license that allows it to operate as an open television station in Venezuela;
- (d) That it refrain from any other action aimed at illegitimately restricting freedom of expression or its assets and, in general, the human rights of those who subscribed to [the request for provisional measures], and
- (e) That the provisional measures [granted] by the Court be ratified *in toto* [...].

8. The brief of May 29, 2007, and its appendixes, received by the Secretariat of the Court on June 4, 2007, in which fourteen persons,⁵ two of whom subscribed to the brief of May 28, 2007⁶ (*supra* Having seen paragraph 7), alleged "victims and petitioners in the case presently before the inter-American system [, ...] became parties to the [said] request submitted to the Court [...] for the Court to urgently adopt provisional measures, in the face of the imminent danger of grave and irreparable damage to [their] human rights, particularly to freedom of expression, as a result of the shut-down of the transmissions [of RCTV]." In this brief, in addition to endorsing this request (*supra* Having seen paragraph 7), they stated, *inter alia*, that:

- (a) On "May 27, 2007, at 11:59:59, the State [...] executed its decisions to close down RCTV for the alleged expiry and non-extension of its license, and to take or seize the transmission equipment," and
- (b) "The request for the adoption of these provisional measures by the Court [... was] also based on the need to protect [them] as victims in the case of *Luisiana Ríos et al.*[...], for which the Commission had submitted the application [...] to the Court, and whose situation had been aggravated extremely by the recent decisions adopted by the State."

Therefore, in this brief they asked the Court to order the State to adopt the following provisional measures:

- (a) To re-establish the situation until the case of *Luisiana Ríos et al.* pending before the Inter-American Court in which they are victims and parties has been processed, so that RCTV can continue to operate normally as a communication medium, in the same conditions in which it operated before the execution of the said measures;
- (b) That it refrain from threatening or carrying out against this station, or against all the journalists, management, shareholders and employees of the said medium, any form or act of arbitrary cancellation or non-renewal of the license that allows it to operate as an open television station in Venezuela";
- (c) That it refrain from any other action aimed at illegitimately restricting freedom of expression or its assets and, in general, the human rights of those who subscribed to the [...] petition; and finally,
- (d) That the provisional measures previously granted by the Court be ratified *in toto* for [their] protection and that the State be ordered once again to comply fully with them.

⁵ Luis Augusto Contreras Alvarado, Eduardo Sapene Granier, Wilmer Marcano, Winston Gutiérrez, Isabel Mavarez, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía and Carlos Colmenares

⁶ Isabel Mavarez and Eduardo Sapene.

9. The Order issued by the President on June 14, 2007, in which, in exercise of the authority conferred on him by Article 63(2) of the American Convention on Human Rights and Article 25 of the Rules of Procedure, and after prior consultation with the judges of the Court, he decided:

1. To reject the request for provisional measures submitted on May 26 and June 4, 2007, for the reasons adduced in the ninth and tenth considering paragraphs.
2. To request the State to maintain the provisional measures decided in the Orders issued by the Court on November 27, 2002, November 21, 2003, September 8, 2004, and September 12, 2005 (*supra* Having seen paragraphs 1 and 2).
3. To notify the [...] Order to the State, the Inter-American Commission on Human Rights, and the representatives of the alleged victims.

10. The brief of June 8, 2007, received on June 19, 2007, by the Secretariat of the Court, in which Eduardo Sapene and 180 other persons, assisted by Carlos Ayala Corao, Pedro Nikken, Oswaldo Quintana and Moirah Sánchez, “became parties to the request (*supra* Having seen paragraph 7) submitted to the Court [...] for the Court to adopt provisional measures forthwith, in the face of the imminent danger of grave and irreparable damage continuing or new grave and irreparable damage occurring against [their] human rights, particularly against freedom of expression, owing to the shut-down of the transmissions of the social communication medium, the television station [...] (RCTV) where they worked and exercised [their] right to seek and impart information and opinions of all kinds and without prior censorship.” In the said brief, they asked the Court to order the State to adopt the provisional measures requested in the brief of June 4, 2007 (*supra* Having seen paragraph 8) and stated that, since they were not parties to that brief, it should be considered an *amicus curiae* in relation to the request for the adoption of the said provisional measures. This brief was first received by e-mail on June 8, 2007.

CONSIDERING:

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

2. That Article 63(2) of the American Convention stipulates that:

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 regard to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That, in this regard, Articles 25(1) and 25(2) of the Rules of Procedure of the Court establish 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.

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

4. That Article 1(1) of the Convention establishes the obligation of State 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 the obligation of the State to adopt the provisional measures ordered in the aforementioned orders of the Court is in force at the present time (*supra* Having seen paragraphs 1 and 2).

6. That, following the aforementioned orders for provisional measures, the Inter-American Commission lodged a case before the Inter-American Court, for the Court to establish the alleged responsibility of the State for violating the rights to freedom of expression, judicial guarantees and judicial protection of 20 persons, who are also beneficiaries of the provisional measures already ordered by the Court (*supra* Having seen paragraphs 1, 2 and 5).

7. That the facts presented as justification for the requests of May 26, June 4 and 19, 2007 (*supra* Having seen paragraphs 7, 8 and 10), include: the alleged threat of annulment and/or non-renewal of RCTV's license as a Venezuelan television station; the alleged formalization of the decision not to renew the broadcasting frequency license used by RCTV; the alleged lack of judicial guarantees in relation to the actions filed by the alleged victims; the alleged implementation of the decisions of State authorities to close down RCTV because of the alleged expiry and non-extension of its license, and to seize the assets of the shareholders of RCTV in order to make them available to a new television station that would use the said frequency, supposedly without any legal proceedings for expropriation or forcible acquisition having taken place. The representatives claim that these facts necessarily entail an irreparable violation of the freedom of expression of the alleged victims; and that these facts are distinct from those considered in the provisional measures already decided by the Court in its Orders of November 27, 2002, November 21, 2003, September 8, 2004, and September 12, 2005 (*supra* Having seen paragraphs 1 and 2).

8. That, as stated in the last Order issued in the case of Luisiana Ríos *et al.* (*supra* Having seen paragraph 4), when the Court ordered the adoption of provisional measures and their subsequent expansion, it also decided on the said protection of freedom of expression in direct relation to the danger to life and personal integrity as a result of the alleged threats and harassment to which the beneficiaries of the measures were being subjected.⁷

9. That, in the case of requests for provisional measures, the Court must only take into consideration those arguments that are strictly and directly related to extreme gravity, urgency and the need to avoid irreparable damage to persons. Any other fact or argument can only be considered and decided by the Court when considering the merits of a contentious case.⁸

⁷ Cf. Having seen paragraphs of the Orders of the Inter-American Court of Human Rights of November 27, 2002, November 21, 2003, September 8, 2004 and September 12, 2005. See also the Order of the Court of January 24, 2007, ninth considering paragraph (*supra* Having seen paragraph No. 2).

⁸ Cf. *Matter of Castañeda Gutman. Request for provisional measures with regard Mexico*. Order of the Court of November 25, 2005, eighth considering paragraph; *Matter of James et al. Provisional Measures with regard to Trinidad and Tobago*. Order of the Court of August 29, 1998. Series E No. 2, sixth considering paragraph; *Case of Herrera Ulloa. Provisional Measures with regard to Costa Rica*. Order of the President of the Court of April 6, 2001, fourth considering paragraph, and Order of the Court of September 7, 2001, eighth considering paragraph; *Case of Cesti Hurtado. Provisional Measures with regard to Peru*. Order of the President of the Court of July 29, 1997, fifth considering paragraph, and Order of the Court of September 11, 1997, fifth considering paragraph.

10. That, as considered by the President in his previous Order (*supra* Having seen paragraph 9), in this case it is not possible to determine *fumus boni iuris* without making a ruling on the merits of the matter in question, which would imply an assessment of whether the facts alleged by the representatives are in conformity with the American Convention. A decision on merits is made in a judgement delivered in the course of the proceedings on a contentious case lodged before the Court, and not while processing provisional measures. The adoption of the requested measures could imply an incidental prior judgment, with the subsequent establishment of some of the facts and their respective consequences, and these are the object of the principal dispute in the case lodged before the Court.⁹ Therefore, it is not appropriate to order the adoption of the requested measures (*supra* Having seen paragraphs 7 and 8) in the terms of Article 63(2) of the Convention.

11. That this Order should not prejudge the allegations of the Inter-American Commission in its application, or the contents of the aforementioned request.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To ratify *in toto* the Order of the President of the Inter-American Court of Human Rights of June 14, 2007.
2. To reject, for the reasons set out in the ninth and tenth considering paragraphs, the requests for provisional measures submitted on May 26, and June 4 and June 19, 2007 (*supra* Having seen paragraphs 7, 8 and 10).
3. To request the State to maintain the provisional measures decided in the Orders issued by the Court on November 27, 2002, November 21, 2003, September 8, 2004, and September 12, 2005 (*supra* Having seen paragraphs 1 and 2).
4. To notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the alleged victims.

Sergio García Ramírez
President

⁹ Cf. *Matter of Castañeda Gutman. Request for Provisional Measures with regard Mexico*. Order of the Court of November 25, 2005, sixth considering paragraph.

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