

**Order of the
Inter-American Court of Human Rights*
of January 29, 2008
Provisional Measures
with regard to the Bolivarian Republic of Venezuela
Matter of "Globovisión" Television Station**

Having seen:

1. The Order issued by the President of the Inter-American Court of Human Rights (hereinafter, "the Court") on August 3, 2004, whereby, in consultation with the judges of the Court, he decided:

1. To request the State to adopt, forthwith, the measures that [may be] necessary to safeguard and protect the life, personal integrity and freedom of speech of journalists, management and employees of Globovisión, and of any other persons visiting the premises of said media company or who are directly related to the journalistic activities of said company.

2. To request the State to adopt, forthwith, the measures that [may be] necessary to implement a perimetral protection for the offices of the media and social communication company Globovisión.

3. To request the State to investigate the events that prompted the issuance of the [...] measures, in order to identify the persons liable and to impose them the corresponding sanctions.

4. To request the State to allow the beneficiaries of such measures to participate in the planning and implementation of said measures and, generally, to keep them informed on the progress of the measures ordered by the President of the Inter-American Court of Human Rights. [...]

8. To request the State to inform the Inter-American Court of Human Rights, on a two-monthly basis, on the fulfillment of the measures adopted, and to request the representatives of the beneficiaries of said measures to submit their objections to the two-monthly reports, within a one month period counted as from the date they received said reports, and to the Inter-American Commission on Human Rights, to submit its objections to the reports filed by the State within a term of six weeks, as from receipt thereof. [...]

2. The Order of the Court of September 4, 2004, whereby it decided:

1. To fully ratify the Order of the President of the Inter-American Court of Human Rights of August 3, 2004 [...] and, therefore, to request the State to maintain the measures it may have adopted and to adopt forthwith any measures necessary to comply with said Order.

2. To request the State to continue investigating the facts that prompted the adoption of these measures, in order to identify the persons liable and impose them the corresponding sanctions.

3. To require the State to allow the representatives of the beneficiaries of said measures to participate in the planning and implementation of the measures and, generally, to keep them

* Judge Diego García-Sayán informed the Court that he would be unable to be present at the deliberations and sign this Order.

informed on the progress of the implementation of the measures ordered by the Inter-American Court of Human Rights.

4. To request the State to continue informing the Inter-American Court of Human Rights, on a two-monthly basis, on the fulfillment of the measures adopted.

5. To request the representatives of the beneficiaries of said measures to submit their comments on the bi-monthly reports filed by the State, within one month counted as from the date they receive said reports; and also to request the Inter-American Commission of Human Rights to file its comments on the reports submitted by the State, within a term of six weeks as from the date they received such report.

3. The reports submitted by the State of Venezuela (hereinafter "the State" or "Venezuela"), the corresponding comments filed by the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") and by the representatives of the beneficiaries (hereinafter "the representatives") on said reports, and the filings submitted by the Commission and the representatives during the period extending from November 2004 and December 2007, in connection with the provisional measures ordered by the Court.

4. The application filed by the Inter-American Commission against Venezuela, on April 12, 2007, without any Exhibits, and on May 4 of same year, with the corresponding Exhibits, in connection with the case Gabriela Perozo et al (No. 12,422).

5. The notices sent by the Office of the Secretary of the Court (hereinafter the "Secretariat") on May 11, 2007, whereby the petition was served upon the parties.

6. The brief with requests, arguments and evidence submitted by the representatives of the alleged victims, on July 12, 2007, in connection with the case of Gabriela Perozo et al (No. 12,442).

7. The filing of the preliminary objections, answer to the petition and objections to the requests, arguments and evidence, submitted on behalf of the State on September 11, 2007, without any Exhibits, and on the eighteenth day of same month and year, filed together with its Exhibits, in connection with the case Gabriela Perozo et al. (12.442).

8. The submission made on October 23, 2007, and the exhibits thereof, whereby the representatives of the beneficiaries of the provisional measures, "in their own name and on behalf of all journalists, management and employees of Globovisión", requested, *inter alia*, "that [the] scope [of these provisional measures] be expanded", and particularly, that the State be ordered to implement the following measures:

[...] 9. To request the State to abstain from inflicting psychological aggression on and making any provocative statements against media companies, its journalists, management and employees, through its senior officers, and especially, against Globovisión, in order to prevent the consequent intimidating actions and physical attacks on petitioners.

10. To request the State to avoid the abusive and unnecessary use of the mechanism of transmission of governmental messages through simultaneous radio and television broadcasting, in order to prevent that such mechanism may become a censorship tool used against the media.

11. To request the State of Venezuela to abstain from implementing discriminating practices intended to impair the access of private communication and media companies, and especially Globovisión, to the news originating in governmental sources.

9. The note issued by the Secretariat on October 30, 2007, whereby, and following the instructions of the President, the Commission and the State were granted a term expiring

on November 14, 2007, to submit the comments they could deem adequate on the filing made by the representatives (item 8 above), "especially regarding the request for the broadening of the measures."

10. The filing made on November 14, 2007, whereby the Inter-American Commission, in view of the request made by the Secretariat through the note of October 30, 2007, submitted the comments on the request for the expansion of the measures filed by the representatives. The Commission stated, among other things, that "the majority of the measures requested by the representatives of the beneficiaries in the request for expansion are related to the duty of the State to safeguard and protect the life, personal integrity and freedom of speech of the beneficiaries, and consequently they only involve a repetition of the measures already ordered by the Court and still effective."

11. The filing of November 14, 2007, whereby the State, according to the note issued by the Secretariat on October 30, 2007, submitted its comments on the request filed by the representatives on October 23, 2007, and requested the Court, *inter alia*, to "lift the provisional measures ordered [...] and] dismiss the request for the expansion of said measures."

12. The Order issued by the Court on November 21, 2007, by means of which it decided:

1. To dismiss, on the grounds included in the *considering* clauses 12 to 16 [of said Order], the request for the expansion of the provisional measures that had been filed on October 23, 2007 [...].
2. To request the State to maintain the provisional measures granted through the Order of the Inter-American Court of Human Rights of September 4, 2004 [...]
3. To give notice of the [...] Order to the Inter-American Commission on Human Rights, to the representatives of the beneficiaries of such measures, and to the State.

13. The submission made on December 2, 2007, with exhibits, and received on the seventeenth day of same month and year, whereby the representatives of the beneficiaries of the provisional measures, "in their own name and on behalf of all journalists, management and employees of Globovisión," requested, *inter alia*, "that [the] scope [of these provisional measures] be expanded." The representatives grounded their request on the following facts:

- a) the "[a]ccusation made against Globovisión of setting up a psychological campaign to generate unrest among people. Such accusation was made by the *Ministro del Poder Popular para las Relaciones Interiores y Justicia* (Minister of the People Power for Domestic Affairs and Justice), [...] and by the *Director del Cuerpo de Investigaciones Científicas Penales y Criminalísticas* (Director of the Board for Criminal and Criminalistics Scientific Research (CICPC, for its acronym in Spanish) [...];"
- b) "[...]the administrative proceedings for the application of penalties started by the *Consejo Nacional Electoral* (National Electoral Board) (CNE, for its acronym in Spanish) against Globovisión and the suspension, ordered by said board, of certain programm[es] broadcasted by [the] television station;"
- c) that some associations and persons linked to the Government had filed a petition before the Office of the Ombudsman and complaints before the General

Attorney's Office, the National Electoral Board and the National Telecommunications Commission (CONATEL, for its acronym in Spanish) against Globovisión;

d) the "[i]ncitement to the murder of Alberto Federico Ravell, General Director of Globovisión, by the state-owned TV channel [...]" and the "[d]eath threat against Globovisión correspondent in the State of Aragua, Carmen Elica Pecorelli [...];"

e) several "[a]ttacks to the property and premises of Globovisión made by supporters and partisans of the National Government [...]", including, though not limited to:

- i. "[p]hysical aggression to a Globovision team perpetrated by Agents of the Metropolitan Police, in Plaza Venezuela, Caracas, on December 6, 2007 [...];"
- ii. "[a]ggression to Globovisión reporters, Diana Carolina Ruíz and Beatriz Adrián, while they were covering the third debate on the constitutional amendment bill by the National Assembly, on October 15, [...];"
- iii. the "[a]ttack to a] microwave equipment belonging to Globovisión at the premises of the *Universidad Central de Venezuela*, on November 7, 2007 [...];"
- iv. damages made to Globovisión premises on November 11, 2007 through wall paintings with the word "SI" (YES), clearly referring to the proposal for the constitutional amendment, and the word "FASCISTS";
- v. verbal abuse made during a political meeting held in the surroundings of Globovisión premises, by the so-called *Comando Simón Bolívar*, on November 15, 2007 and the alleged damages made with paintings and petards to the facade of the TV station;
- vi. the "[a]ggression to a Globovision team after the coverage of the declarations of the National Federation of Workers of the Transportation Sector, in downtown Caracas, on November 20, 2007 [...];"
- vii. the "[v]erbal] [a]buse of Globovision premises on November 28, 2007;"
- viii. "[o]bstruction by] Members of the Republic Plan [...] of the right to vote of Globovisión workers and [a]ttack to] reporter Ana Karina Villalba, perpetrated at School Unit San Carlos Borrromeo, in Caricuao, Caracas, on December 2, 2007," and
- ix. the "[a]ggression to Globovisión correspondent in the State of Táchira, Freddy Machado, during the coverage of the referendum for the approval of the constitutional amendment, on December 2, 2007 [...];"

f) the “[d]etention [and subsequent release] of[...] [a] worker of Globovisión, by members of the Regional Squad No. 5 of the *Guardia Nacional*, on October 19, 2007.”

Furthermore, the representatives repeat certain events included in their filing of October 23, 2007, among which it is worth pointing out the following:

- i. “The verbal attacks [against journalists, management and employees of Globovisión] by public authorities and officials and by Government supporters through the official media or media that are totally identified with the party in power, that have sought to create a climate hostile to the exercise of [their] freedom of expression [...], thus encouraging followers and supporters of official Government policies to carry out physical attacks on [them ...], in order to intimidate them and censor them;”
- ii. the “lack of access to the official sources and discrimination of Globovisión reporters [...]”;
- iii. “The abusive use of messages broadcast on the national radio and television network by the President of the Republic.”
- iv. the “imposition of government propaganda by the State of Venezuela;”
- v. the “[...] indirect pressure and censorship exerted by the State of Venezuela by avoiding to hire Globovisión services for government propaganda,”
- vi. the “[...] indirect pressure exerted by the State through the denial of the licenses and permits requested by Globovisión to expand its coverage [...]”.

In said filing, the representatives requested the Court to reiterate to the Government the ratified provisional measures, to call an open meeting “[...] so that the parties may be aware of the State’s non-compliance with the provisional measures [...]” and to order the State to expand said provisional measures pursuant to the same terms and conditions included in the request of October 23, 2007 (item 8 *supra*).

14. The Order of the President of the Court, issued on December 21, 2007, by means of which, in consultation with all the judges of the Court, he decided:

1. To dismiss, on the grounds stated in the *considering* clauses 10 to 13 [of said Order], the request for the expansion of the provisional measures filed on December 17, 2007.
2. To request the State to maintain the provisional measures ordered by the Inter-American Court of Human Rights on September 4, 2004 [...]
3. To give notice of [...] the Order to the Inter-American Commission on Human Rights, to the representatives of the beneficiaries of said provisional measures, and to the State.
[...]

CONSIDERING:

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

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, 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, paragraphs 1 and 2 of Article 25 of the Court's Rules of Procedure 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 embodies the general 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 the provisional measures decreed in the Order of the Court on September 4, 2004 (*supra* Having seen paragraph 2) and ratified by the Order of the Court issued on November 21, 2007 (*supra* Having seen paragraph 12) are still in force.

6. That, following the said order for provisional measures, the Inter-American Commission lodged an application before the Inter-American Court for the Court to establish the alleged responsibility of the State for the violation of the rights to freedom of expression, a fair trial, and judicial protection of 44 persons, and of the right to humane treatment of six persons. These people are also beneficiaries of the provisional measures already ordered by the Court (*supra* Having seen paragraphs 2 and 4).

7. That, on October 23, 2007, the representatives submitted to the Court a request for the expansion of the scope of the provisional measures that had been ordered (*supra* Having seen paragraph 8), and on November 14, 2007, the State requested that the measures be lifted (*supra* Having seen paragraph 11). Through an order issued on November 21, 2007, served on December 20 of even year, the Court decided to dismiss the abovementioned requests (*supra* Having seen paragraph 12).

8. That the representatives have filed a new request for the expansion of the measures, whereby they allege that the facts upon which they ground the request, would pose a threat to the life, personal integrity and freedom of speech of the beneficiaries of the provisional measures (*supra* Having seen paragraph 13).

9. That as pointed out in the Order issued in the matter “Globovisión” Television Station (*supra* Having seen paragraph 2), when the Court ordered the provisional measures, the said protection of the freedom of expression was determined in direct relation to the danger to life and personal integrity as a result of the alleged threats and attacks to the beneficiaries of the measures.

10. 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 case¹.

11. That, 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 judgment 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 consequent 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.² Therefore, it is not appropriate to order the requested expansion of the content of the measures (*supra* Having seen paragraph 13), in the terms of Article 63(2) of the Convention.

12. That notwithstanding the foregoing, it is necessary to note that some of the alleged facts used as grounds for the last request for expansion filed by the representatives, refer to circumstances that could be included among those that should be avoided within the scope of protection granted by the provisional measures already ordered and in full force. In this sense, it is worth recalling the considerations that the Court included in the Order issued in the instant case:

Consequently, the State must continue to adopt the appropriate and necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the beneficiaries of these provisional measures, especially when they carry out journalistic activities outside the station's offices, the circumstances in which, according to the reports received, the most recent alleged physical attacks have occurred. The means and coverage of this protection must respond to the requirements of the circumstances, and be adapted, insofar as possible, to the need to protect the life, personal integrity, and freedom of expression of the beneficiaries and to the specific situations that occur. In this regard, the Court urges the beneficiaries and the State to collaborate in order to take into account the recommendations made by the State's security

¹ Cf. *Matter of James et al. v. Trinidad and Tobago. Provisional measures with regard to Trinidad and Tobago*. Order of the Court of August 20, 1998, sixth considering paragraph; *Matter of Castañeda-Gutman v. Mexico. Provisional measures with regard to Mexico*. Order of the Court of November 25, 2005, eighth considering paragraph; *Case of Juan Humberto-Sánchez. Provisional measures with regard to Honduras*. Order of the Court of February 7, 2006, seventh considering paragraph, and *Matter of Luisiana Ríos et al. Provisional measures with regard to Venezuela*. Order of the Court of July 3, 2007, ninth considering paragraph, and *Matter of “Globovisión” Television Station. Provisional Measures with regard to Venezuela*. Order of the Court of November 21, 2007, fourteenth considering paragraph. See also: *Case of Cesti-Hurtado*. Provisional measures with regard to Peru. Order of the Court of September 11, 1997, fifth considering paragraph, and *Case of Herrera Ulloa*. Provisional Measures with regard to Costa Rica. Order of the Court of September 7, 2001, eighth considering paragraph.

² Cf. *Matter of Castañeda-Gutman v. Mexico*. Provisional measures with regard to Mexico, *supra* note 1, tenth considering paragraph, and *Matter of Luisiana Ríos et al.* Provisional measures with regard to Venezuela, *supra* note 1, fifteenth considering paragraph.

agency, and the concerns and proposals of the representatives of the beneficiaries, and to design jointly the means by which the measures of protection are provided.³

13. That this Order does not prejudice the existing dispute between the parties in the case of Gabriela Perozo et al., or the matters described in the said request.

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 ratify all the terms of the Order of the President of the Inter-American Court of Human Rights of December 21, 2007 (*supra* Having seen paragraph 14) and, therefore, to dismiss, on the grounds indicated in considering paragraphs 10 to 13, the request for the expansion of the provisional measures, lodged on December 17, 2007.
2. To request the State to maintain the provisional measures ordered in the Order of the Inter-American Court of Human Rights of September 4, 2004 (*supra* Having seen paragraph 2).
3. To notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these measures, and the State.

Cecilia Medina-Quiroga
President

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

³ Cf. *Matter of "Globovisión" Television Station*. Provisional Measures regarding Venezuela, *supra* note 2, eleventh whereas clause.

Rhadys Abreu Blondet

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary