

**Order of the
Inter-American Court of Human Rights*
of February 8, 2008
Provisional Measures
with regard to the Republic of Colombia
Case of *Álvarez et al.***

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter, "the President") of July 22, 1997, in the operative part of which it was decided:

1. To request the Republic of Colombia, in strict compliance with the obligation to respect and guarantee human rights which it undertook in accordance with Article 1(1) of the American Convention on Human Rights, to adopt forthwith such measures as are necessary to protect the life and integrity of José Daniel Álvarez, Nidia Linores Ascanio, Gladys López, Yanette Bautista, María Helena Saldarriaga, Piedad Martín, María Eugenia López, Adriana Diosa, Astrid Manrique, Faride Ascanio, Carmen Barrera, Evidalia Chacón, José Publio Bautista, Nelly María Ascanio, Ayda Mile-Ascanio, and Miriam Rosas Ascanio in order to prevent irreparable damage to them.

2. To request [...] the Republic of Colombia, as soon as Mr. Erik Antonio Arellano-Bautista [would return] to its territory, [to] adopt such measures as [would be] necessary to protect his life and physical integrity in order to prevent irreparable damage to him.

3. To request that the Republic of Colombia [would] investigate the facts denounced and [would] punish those responsible for them, particularly with regard to the attack of June 24, 1997, on the Association's offices in the city of Medellín.

4. To request that the Republic of Colombia [would] adopt forthwith such measures as [would be] necessary to ensure that all the offices of the Association of Relatives of Detainees-Disappeared Persons of Colombia [would be able to] discharge [their] functions without danger to the lives or physical integrity of the persons working there, especially the Association's offices in the cities of Medellín and Ocaña.

[...]

2. The Order of the President of August 14, 1997, whereby "the urgent measures adopted in this case for the purpose of guaranteeing the right to life and physical integrity of Mr. Javier Álvarez" were expanded.

3. The Order of the Inter-American Court of Human Rights (hereinafter, "the Court", "the Inter-American Court" or "the Tribunal") of November 11, 1997, in the operative part of which it ratified the orders by the President of July 22 and August 14, 1997 (*supra* Having Seen paragraphs No. 1 and 2) and maintained in force the measures that had been adopted for a six-month period.

4. The Order of the President of December 22, 1997, ratified by the Court on January 21, 1998, whereby it expanded "the urgent measures adopted in this case

* Judge Manuel E. Ventura-Robles informed the Court that, for reasons beyond his control, he would not be able to attend the deliberation and signing of this Order.

in order to ensure the right to life and physical integrity of Ms. María Eugenia Cárdenas and her family.”

5. The Order of the President of May 12, 1998, whereby it extended in time the measures adopted up to June 19, 1998.

6. The Order of the Court of June 19, 1998, whereby it decided to extend in time the measures in favor of Ms. María Eugenia Cárdenas, for as long as the risk situation which justified their adoption might prevail, and to maintain up to September 6, of the aforementioned year, the measures in favor of José Daniel Álvarez, Nidia Linores-Ascanio, Gladys López, Yanette Bautista, María Helena Saldarriaga, Piedad Martín, María Eugenia López, Adriana Diosa, Astrid Manrique, Faride Ascanio, Carmen Barrera, Evidalia Chacón, José Publio Bautista, Nelly María Ascanio, Ayda Mile-Ascanio, Miriam Rosas-Ascanio and Javier Álvarez.

7. The Order of the President of August 6, 1998, in the operative part of which the State was called upon to adopt urgently “all necessary measures to ensure the right to life and physical integrity of Daniel Prado, Estela de Prado and their daughters, Camilla Alejandra and Lina.”

8. The Order of the Court of August 29, 1998, whereby it decided to maintain the provisional measures that had been adopted, to ratify the Order of the President of August 6, 1998 (*supra* Having Seen paragraph No. 7) and to request the State to carry out an investigation of the facts that gave rise to such measures.

9. The Order of the President of July 17, 2000, whereby the State was called upon to adopt, as a matter of urgency, the measures necessary to ensure the right to life and to physical integrity of Luz Elsie Almanza, Hilda Rosario Jiménez, Ramón Rangel, Robinson Amador, Yamel López, Emely Pérez, Yolanda Salamanca, Rosa Tulia Bolaños, Rocío Campos and Alexánder Rodríguez, and to effect an investigation aimed at punishing those found guilty of the facts described by the Inter-American Commission.

10. The Order of the Court of August 10, 2000, whereby it decided to maintain the provisional measures that had been adopted, to ratify the Order of the President of July 17, 2000 (*supra* Having Seen paragraph No. 9) and to call upon the State to carry out an investigation of the facts that gave rise to the instant measures.

11. The Order of the President of October 11, 2000, in the operative part of which the State was called upon to adopt the measures necessary to protect the life and the physical integrity of Ángel Quintero, Claudia Patricia Monsalve, Marta Soto, Silvia Quintero, Gloria Herney-Galíndez, Gladys Ávila and Rocío Bautista, as well as to determine the whereabouts of the two persons named in the first place, and to investigate the facts described by the Inter-American Commission and punish those responsible thereof. The State was also called upon to adopt, forthwith, the measures necessary in order to “ensure that all the offices of the *Asociación de Familiares de Detenidos Desaparecidos de Colombia* (Association of Relatives to Detainees-Disappeared Persons of Colombia) [(hereinafter, “ASFADDES”)] c[ould] discharge their functions with no danger for the life or the physical integrity of those working in them.”

12. The Order of the Court of November 12, 2000, in the operative part of which it decided to maintain the provisional measures.

13. The brief containing the comments by the Inter-American Commission of May 25, 2001, whereby it reported to the Court that Francisco García, who had been an active member of the Barrancabermeja branch of ASFADDES until February 28, 2001, at which point he ceased to act on account of “lack of guarantees for his security”, had been murdered on May 20, 2001. Likewise, the Commission reported on the threats suffered through the telephone by María Eugenia López, a member of the Medellín branch of the aforementioned association, which threats “cause fear for her life.”

14. The Order of the Court of May 30, 2001, in the operative part of which it decided:

1. To call upon the State of Colombia, in compliance with the orders of the Inter-American Court of Human Rights and in accordance with new circumstances that have arisen in the case:

a. to maintain the provisional measures ordered in favor of José Daniel Alvarez, Nidia Linores Ascanio, Gladys López, Yanette Bautista, María Helena Saldarriaga, Piedad Martín, María Eugenia López, Adriana Diosa, Astrid Manrique, Faride Ascanio, Carmen Barrera, Evidalia Chacón, José Publio Bautista, Nelly María Ascanio, Ayda Mile-Ascanio, Miriam Rosas-Ascanio, Javier Alvarez, Erik A. Arellano-Bautista, Daniel Prado, Estela de Prado, Camilla Alejandra Prado, Lina Prado, Luz Elsia Almanza, Hilda Rosario Jiménez, Ramón Rangel, Robinson Amador, Yamel López, Emely Pérez, Yolanda Salamanca, Rosa Tulia Bolaños, Rocío Campos, Alexander Rodríguez, Ángel Quintero, Claudia Patricia Monsalve, Marta Soto, Silvia Quintero, Gloria Herney-Galindez, Gladys Ávila, Rocío Bautista and María Eugenia Cárdenas and her next of kin; and

b. to adopt, forthwith, whatever measures are necessary to ensure that the persons who work in or visit the offices of the Association of Relatives of Detainees-Disappeared Persons of Colombia (ASFADDES) can perform their functions or conduct their business without danger to their lives and physical integrity.

2. To call upon the State of Colombia to adopt the necessary measures to ensure the right to life and physical integrity of the next of kin of Francisco García; to this end, it request[ed] the Inter-American Commission on Human Rights to submit to the State of Colombia a list of the persons in favor of whom the State must adopt the said measures of protection, within 15 days of being notified of [the] Order.

3. To call upon the State of Colombia to investigate the facts described by the Inter-American Commission on Human Rights that gave rise to the adoption of these measures, in order to obtain effective results leading to the identification of those responsible and their punishment. The State [had to] assume this obligation to investigate, together with that of preventing and punishing, as a legal obligation and not as a mere formality.

4. To request the State of Colombia to allow the petitioners to take part in the planning and implementation of these measures and that, in general, [that] it [would] maintain them informed about progress in the measures ordered by the Inter-American Court of Human Rights.

[...]

15. The briefs filed by the State of Colombia (hereinafter, “the State” or “Colombia”) between June 14, 2001 and February 5, 2007, whereby, *inter alia*, it reported on the protection measures adopted with regard to the beneficiaries and

dwelt upon the investigation of the facts that prompted the adoption of the provisional measures.

16. The briefs filed by the representatives of the beneficiaries of the provisional measures (hereinafter, "the representatives") between April 1, 2004 and July 3, 2007, whereby they forwarded their comments on the reports by the State (*supra* Having Seen paragraph No. 15). The representatives requested that the provisional measures "be expanded" in favor of the directors of the organization "*Familiares Colombia*" (Colombia Next of Kin).

17. The briefs filed by the Inter-American Commission for Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") between August 7, 2001 and March 27, 2007, whereby it forwarded its comments on the information reported by the State (*supra* Having Seen paragraph No. 15).

18. The written communication from the Secretariat of the Court (hereinafter, "the Secretariat") dated July 17, 2007, whereby, following instructions from the President, it requested the representatives to submit the following information:

- a) a list of each and every one of the beneficiaries of the instant provisional measures, with their respective updated explanations and supporting documents justifying whether the circumstances of extreme gravity and urgency to avoid irreparable damage to each one of such persons are still current;
- b) a list of all the persons to whom the representatives request[ed] the instant provisional measures "to be expanded", with the pertaining justification and supporting documents regarding each one of them, showing *prima facie* that they are in the situation described in Article 63(2) of the American Convention on Human Rights, and
- c) a detailed listing of the situation in which each one of the premises of the ASFADDES organization is and the pertaining updated arguments and documents justifying why the instant provisional measures have to be maintained.

19. The brief of November 8, 2007, whereby the representatives filed part of the information requested by the Court (*supra* Having Seen paragraph No. 18).

20. The written communication from the Secretariat of July 17, 2007, whereby, following instructions by the President, it requested the Commission to inform the Tribunal on the procedural stage reached by the instant matter in the proceedings pending before it. Furthermore, it was requested to give its opinion regarding the procedural standing of the representatives to request the expansion of the instant provisional measures with regard to the "directors" of the organization "*Familiares Colombia*" (Colombia Next of Kin) (*supra* Having Seen paragraph No. 16).

21. The brief of August 17, 2007, whereby the Commission, in response to the request by the Court (*supra* Having Seen paragraph No. 20), reported that "Case Number 11.764 *Álvarez et al* is pending, at the joint stage on admissibility and the merits, pursuant to Article 37(3) of the Rules of Procedure of the Commission."

22. The brief of December 12, 2007, wherein the Commission expressed its opinion regarding the procedural standing of the representatives to request the expansion of the measures (*supra* Having Seen paragraph No. 20).

23. The communication of December 3, 2007, whereby the State requested the Tribunal to "specif[y] the names of the beneficiaries of the provisional measures" ordered by the Court in the instant matter.

24. The Order of the President of the Inter-American Court of December 18, 2007, whereby it summoned the State, the Inter-American Commission and the

representatives of the beneficiaries to a public hearing for the purpose of obtaining further information on “the implementation of the provisional measures, the beneficiaries thereof, and the need to keep them in force.”

25. The public hearing on the instant provisional measures held on February 4, 2008, at the seat of the Tribunal.¹

CONSIDERING:

1. That Colombia is a State Party to the American Convention on Human Rights (hereinafter, “the Convention”) since July 31, 1973, and that, under Article 62 thereof, it accepted the contentious jurisdiction of the Court on June 21, 1985.

2. That Article 63(2) of the American Convention provides that “[i]n 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.”

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3. That in the Order of the Court of May 30, 2001 (*supra* Having Seen paragraph No. 14), the State was requested to maintain the provisional measures ordered in favor of forty persons and one family.

¹ Pursuant to Article 6(2) of the Rules of Procedure, the Court held the hearing with a Bench Committee wherein sat: Judge Cecilia Medina-Quiroga, President; Judge Leonardo A. Franco and Judge Margarette May Macaulay. Being present at this hearing: a) for the Inter-American Commission: Santiago Canton, Executive Secretary, Delegate, Juan Pablo Albán, Karin Mansel y Lilly Ching, counsels; b) representing the beneficiaries: Gustavo Gallón-Giraldo and Luz Marina Monzón, of the *Comisión Colombiana de Juristas* (Colombian Commission of Jurists) and c) for the State: Carlos Franco-Echavarría, *Director del Programa Presidencial para los Derechos Humanos y Derecho Internacional Humanitario* (Director of the Presidential Program for Human Rights and International Humanitarian Law); Clara Inés Vargas-Silva, *Directora de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores* (Director for Human Rights and International Humanitarian Law with the Foreign Affairs Ministry); Juan Carlos Gómez-Ramírez, *Director de Derechos Humanos del Ministerio de Defensa Nacional* (Director for Human Rights with the National Defense Ministry); Eduth Claudia Hernández-Aguilar, *Coordinadora de Defensa ante Organismos Internacionales del Ministerio de Defensa Nacional* (Coordinator for Defense before International Organizations with the National Defense Ministry); Francisco Javier Echeverri-Lara, *Director de la Oficina de Asuntos Internacionales de la Fiscalía General de la Nación* (Director of the International Affairs Office with the National Prosecutor-General); Liliana Romero, *Asesora de la Oficina de Asuntos Internacionales de la Fiscalía General de la Nación* (Advisor with the International Affairs Office of the National Prosecutor-General); Janneth Mabel Lozano-Olave, *Coordinadora en Protección e Información a Organismos Internacionales de la Dirección de Derechos Humanos y Derecho Internacional Humanitario del Ministerio de Relaciones Exteriores*, (Coordinator for Protection and Reporting to International Organizations with the Office of the Director for Human Rights and International Humanitarian Law of the Foreign Affairs Ministry) and Sandra Jeannette Castro-Ospina, *Jefa de la Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario de la Fiscalía General de la Nación* (Chief, National Unit for Human Rights and International Humanitarian Law with the Office of the National Prosecutor-General).

4. That the State reported on the implementation of several protection measures in favor of the beneficiaries and of the premises of ASFADDES. During the public hearing, the State expressed, *inter alia*, that:

- a) currently "fifteen persons" benefit from "some measure of protection, two of which appear in the decree for provisional measures";
- b) from the members of *Familiares Colombia* (Colombia Next of Kin) "twelve persons" are given some measure of protection, among them "four persons" appearing on the original decree on provisional measures;
- c) from "twenty-seven protected persons, considering both organizations as a whole, nine appear on the original decree on provisional measures", that is to say, they are protected "by reason of their belonging to the organization or of the level of the risk they run", without a "request" by the Court being necessary;
- d) "other persons" receive a "mass transit subsidy" in favor of the organizations, and
- e) it has adopted measures regarding "protection of the premises", strengthening preventive mechanisms such as "armoring, closed-circuit television cameras", "communications media inside such premises" as well as "National Police immediate response mechanisms", by means of "regularly scheduled visits logged on a minute-book" and "mechanisms for direct communication with the authorities."

5. That the State alleged "resistance on the part of the beneficiaries" to "submit to risk-rating mechanisms or to provide information [requested by the] *Programa de Protección del Ministerio del Interior y Justicia* (Protection Program of the Ministry of Justice and the Interior)."

6. That, in the report of July 3, 2007, the representatives pointed out that "implementation, revision and adjustment of the protection measures to [ASFADDES] premises is a commitment with which compliance is still pending."

7. That the Court sets store by the measures the State has adopted in the period during which the provisional measures have been in force. The pertinence of continuing with them will be discussed herein below.

8. That in the Order of the Court of May 30, 2001 (*supra* Having Seen paragraph No. 14) the State was called upon to adopt, "forthwith, all such measures as may be necessary in order to ensure that all persons working or visiting the offices of the ASFADDES can discharge their functions with no danger for their life or their physical integrity". In order to determine compliance with this order and the pertinence of continuing to enforce it, the Court will start by analyzing: i) the debate the parties have held about the beneficiaries of this protection measure and, later, ii) the extreme gravity and urgency of avoiding irreparable damage to life and physical integrity in the instant matter.

9. That as regards the beneficiaries of the measures of July 3, 2007, the representatives pointed out that the provisional measures must protect "the members, the directors and the users of ASFADDES." Likewise, they indicated that "some of the members of ASFADDES, beneficiaries of the provisional measures, are now forming part of the *Asociación Familiares por el Apoyo Mutuo Familiares Colombia* (Next of Kin for Mutual Support Colombia Next of Kin)." In such respect,

on November 8, 2007, the representatives stated that “it is of the utmost necessity that such protection measures be expanded to all the other directors of the organization [*Familiares Colombia* (Colombia Next of Kin),] given the fact that [...] they have also been subject to threats and harassment on account of the work in which they are involved.” The representatives pointed out that “a change in the standards to define who the beneficiaries are might leave without protection those persons who, though not identifiable at this moment, might run risks by visiting the offices in order to request support.”

10. That the State indicated during the public hearing, *inter alia*, that:

- a) it requests the Tribunal to “reconsider the standard whereby all the persons visiting the offices of ASFADDES must be considered protected under the instant provisional measures”, inasmuch as “the persons who will visit in the future such office or offices in different parts of the country are an undetermined number and an imprecise number” and, furthermore, “it cannot be prejudged from the outset [...] that all persons visiting the offices are going to run the same risk”, bearing in mind that the measures are only in order for cases of extreme gravity and urgency and, therefore, it is necessary “for the risk to be real and not hypothetical”, and
- b) the measures must have a “temporary” character and the beneficiaries thereof “must be so in direct connection with a [contentious] case such as Case No. 11.764.” Along such lines, it stated that “if other measures were necessary” for “other reasons”, the State “has always accepted them”, but that in this specific matter the measures should be kept in line with the contentious case originating them .

11. During the public hearing, the representatives stated, *inter alia*, that:

- a) after the forced disappearance of Ángel Quintero and Claudia Monsalve [in the year 2000] the Court set the standard of expanding the protection “to all those visiting the organization” because the Tribunal “has understood it is protecting a non-governmental organization that defends human rights”, something which includes “those visiting there”;
- b) the Court “[is] not prejudging” but rather the Tribunal understands that “the defense of human rights is in itself a risk factor in countries like Colombia”, where “guarantees are lacking” for “the defense of human rights”;
- c) “among those persons individually identified by the Court” in 2001, some “have set up two more organizations”:
 - i) *Familiares de Desaparecidos Forzadamente por el Apoyo Mútuo Familiares Colombia* (Next of Kin of Forcibly Disappeared Persons for Mutual Support, Colombia Next of Kin), of which José Daniel Álvarez, Rocío Bautista, Gladys López, Astrid Manrique, Fanny Corzo and Amparo Coral form part, and
 - ii) *Fundación Nidya Erika Bautista para los Derechos Humanos* (Nidya Erika Bautista Foundation for Human Rights), of which Yanette Bautista and Erik Arellana form part;
- d) the Court must maintain the protection standard “independently of the organization of which those protected form part” and that the records of

the existence and of the representation of such organizations make it possible to verify that their activities are the same as those of ASFADDES and “the way the defense of human rights relates to their risk situation”, and

- e) the victims in case No. 11.764 “are the persons covered by the protection measures, that is to say they [are] not only [the members of] the organization itself, they are the persons that formed part of ASFADDES at the time the instant case was opened”, therefore the beneficiaries of the measures “are those same persons, regardless of the organization they may have decided to join.”

12. That the Commission supported the points made by the representatives and indicated that they “had procedural standing to request the expansion[,] on the basis that several of the beneficiaries of the provisional measures in question currently belong to the association ‘*Familiares Colombia*’ (Colombia Next of Kin).” In the public hearing the Commission added that the Court protected ASFADDES on account of “the kind of activity the members of such organization were carrying out”, for which reason “if the members of such organization decide to quit, but continue to carry on the same activity in which they were involved in the context of another institution [...] the original risk situation in which they were at the time the Court decided to grant them the provisional measures is doubtlessly still current.”

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13. That provisional measures are exceptional in nature; they are ordered on the basis of the needs for protection and, once ordered must be maintained, provided the basic requirements of extreme gravity and urgency subsist.²

14. That as regards the risk situation at the ASFADDES National Headquarters and its branch premises, the State indicated “that in the case of Popayán recent developments have arisen which are likely to cause greater concern, and it looks like [that] in the case of Medellín, more so, due to other subjective factors.”

15. That in their comments filed on April 11, 2005, the representatives reported that information and documents had been robbed from the Popayán Branch of ASFADDES and they considered it “urgent and necessary for the Colombian Government to timely adopt the appropriate measures in order to guarantee the life and integrity of ASFADDES members and their next of kin who face potential risk due to the robbery of information about them.”

16. That in their comments filed on October 10, 2005, the representatives reported that on June 26, 2005, an advertisement was published in the “*El Tiempo*” (“The Time”) daily newspaper under the headline “*Denuncia Pública*” (“Public Accusation”), “allegedly [paid] by the ASFADDES Coordinating Committee

² Cf. *Matter of Clemente Teherán et al (Zenú Indigenous Community)*. Provisional Measures regarding the Republic of Colombia. Order of the Court of December 1, 2003, Considering paragraph No. 3; Case of Caballero-Delgado and Santana. Provisional Measures regarding the Republic of Colombia. Order of July 4, 2006, Considering paragraph No. 12, and *Matter of Gallardo-Rodríguez*. Request for Provisional Measures regarding Venezuela. Order of the Court of July 11, 2007, Considering paragraph No. 10.

and the coordinator of another human rights organization." That such publication "had not been paid by none of them both", but "it did indeed refer to a position held or some statements made by such two organizations and such event was never clarified by the State", in spite of the fact that a "public statement not only of recognition, but also of [...] rejection of such mechanisms which [amount to] a manner of harassment against the work carried out by human rights defenders" was insistently demanded.

17. That in its comments filed on December 23, 2005, the Commission indicated that "such kind of false attribution of opinions or calls to action by means of paid advertisements in the press has become during recent months a frequent mechanism to harass human rights organizations operating in Colombia that frequently resort to the Inter-American system."

18. That during the public hearing the representatives reported that on September 14, 2007, "at the ASFADDES premises in Medellín, the same premises where the bomb that [gave rise] to the instant provisional measures [was placed], a [funeral] flower arrangement was received" with the following phrases: "the love of God embraces the spirit and takes you into its bosom for all eternity, let the light of God be with you for ever, ASFADDES." The representatives pointed out that the foregoing has "double gravity", because it is "a funeral message" and "it is made to look like the one [sending] the funeral arrangement was a [...] member of ASFADDES, because it was allegedly paid by the ASFADDES General Secretariat."

19. That the Tribunal has underscored that the Organization of American States has recognized, among other things, the need to "support the work carried out, at both the national and regional level, by human rights defenders, [the] recogn[ition for] their valuable contribution to the promotion, observance and protection of human rights and fundamental freedoms [and to] condemn actions that directly or indirectly prevent or hamper [their] work [...] in the Americas."³

20. That events such as those reported before the Court conform, *prima facie*, a set of acts of harassment and grave threats against the premises and the members of ASFADDES. For which reason, the Court considers that in the instant matter the risk situation continues and that it is meet to maintain the protection measures covering the premises. Likewise, the Tribunal considers it meet to continue effecting periodical risk studies in order to determine the type of protection which may be most adequate and effective in the case of every specific person and premises at risk.

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21. That regarding the risk situation of specific beneficiaries, during the public hearing and in their reports, the representatives have mentioned events of surveillance, harassment, intimidation or threats against some members of ASFADDES and against some persons who have visited ASFADDES and have later been harassed. Between 2001 and 2007, risk situations have been reported regarding, *inter alia*, María Eugenia López, Adriana Diosa, Astrid Manrique, Erik Arellana, Daniel Prado, Silvia Quintero, María Eugenia Cárdenas, Álvaro Guisao-

³ Case of Nogueira de Carvalho *et al* v. Brazil. Preliminary Objections and Merits. Judgment of November 26, 2007. Series C No. 161, para. 75.

Usuga, Florentino Guisao-Usuga, Gloria Luz Gómez, Verónica Marín and Nemecio Oquendo. The representatives pointed out that the risk situations have increased “proportionally to progress [in the judicial proceedings] and in the public accusations” in which the organization is active.

22. That the Commission pointed out that “the representative of the State has put forth that a risk situation somehow exists since he has made no reference to necessarily lifting the provisional measures themselves, but rather to [t]he possibility of an alternative that would be a protection program offered by the State of Colombia.”

23. That the Tribunal has established that the States have the duty to provide the necessary means for human rights defenders to do their work freely; to protect them when they are subject to threats in order to foil attempts against their life and physical integrity; to abstain from placing hurdles in the way of their work, and to investigate earnestly and effectively the violations committed against them, fighting impunity.⁴

24. That the Court finds that in the reports filed by the representatives there is specific information on risk situations to the detriment of twelve persons and that such situations would have a *prima facie* connection with the harassment on ASFADDES premises. However, the information provided has not been updated. Consequently, the Court considers it meet to maintain the provisional measures with regard to such twelve persons (*supra* Considering paragraph No. 21) and request the representatives to report, within a six-month time-limit, on the persistence of the specific risk situation of each of them, and specially on all the events that during the year 2007 and the year 2008 so far may provide grounds for assuming that the situation of extreme gravity and urgency is still current, for the purpose of determining whether it be in order to continue with the protection measures.

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25. That in the Order of the Court of May 30, 2001 (*supra* Having Seen paragraph No. 14) the State was called on to “conduct an investigation into the facts described by the Inter-American Commission for Human Rights that had given rise to such measures, in order to obtain effective results leading to the identification of those responsible and their punishment.”

26. That the State reported on this point in its briefs filed with the Tribunal and in the hearing before the Court. In the report filed on January 5, 2005, the State informed that “the *Procuraduría General de la Nación* (Office of the National Attorney-General) ratified the decision it had made on October, 2003, to order the discharge of Colonel Mauricio Santoyo, against whom disciplinary proceedings were instituted for the forced disappearance of Claudia Patricia Monsalve-Pulgarín

⁴ Cf. *Matter of Gloria Giralt de García-Prieto et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of September 26, 2006, Considering paragraph No. 8; *Matter of Mery Naranjo et al. regarding Colombia.* Provisional Measures. Order of the Inter-American Court of Human Rights of July 5, 2006, Considering paragraph No. 8. *Matter of the Forensic Anthropology Foundation of Guatemala.* Provisional Measures. Order of the Inter-American Court of Human Rights of April 21, 2006, Considering paragraph No. 9.

and Angel José Quintero-Mesa." Later, in the report filed on April 15, 2005, the State indicated that Colonel Santoyo Velasco "was disqualified for five years to occupy public office, for his irregular administrative conduct in tapping telephone lines between 1997 and 2001." Likewise, in the report filed on July 18, 2005, the State indicated that "as per Decree No. 001235 of April 21, 2005, issued by the *Dirección de Recursos Humanos de la Policía Nacional* (National Police Human Resources Department), the aforementioned Colonel [was] retired from active service in such Force, by reason of the discharge which had been ordered." In such report the State indicated that as from May 25, 2005 "Colonel Santoyo is no longer in active service, since he has been retired from his post and consequently does not have at this time any kind of connection with the State."

27. During the public hearing, the State expressed, *inter alia*, that:

- a) "there has been progress in the investigation of the disappearance of Claudia Patricia Monsalve and José Ángel Quintero-Mesa." The State added that "even though this case is at the preliminary [stage] because identification of those responsible has not been attained", there is "evidence on who probably were the perpetrators and accessories in this event and that is progress;"
- b) in the prosecutions for threats "a rule allowing application of the statute of limitations" was enforced; however, "the feasibility of re-opening such proceedings" applying "Constitutional Court case law" is being examined;
- c) as far as the rest of the cases are concerned, specifically that of the attack on ASFADDES premises in the city of Medellín, the Office of the Prosecutor "has undergone all procedures within its reach to make headway with this investigation, in spite of the fact that it was quite late in getting to [the] *Unidad [Nacional de Derechos Humanos]* ([National Human Rights] Unit) and that the time factor has prevented the facts from being [...e]stablished." The State indicated that the persons affected "have been summoned to ratify their accusations", without it having been possible to "get considerable data" from them, and
- d) through the *Dirección Nacional de Fiscalías* (Office of the National Director of Prosecutors) a prosecutor [is to be] appointed for each regional branch [...s]o such prosecutor can be, so to speak, the investigation manager in the area."

28. That the representatives consider there is no "driving strategy able to establish the facts." During the public hearing, the representatives stated, *inter alia*, that:

- a) "the *GAULA [Grupos Autónomos y Unificados por la Libertad and la Antiextorsión] de la Policía Nacional de la ciudad de Medellín* (Medellín City National Police Autonomous and Unified Groups for Freedom and against Extortion) [...] illegally tapped more than 2.000 telephones, among which the telephone line belonging to the ASFADDES Medellín branch was to be found." The representatives added that "such telephone tap was removed the day before Ángel Quintero disappeared", for which reason "the members of ASFADDES consider that the *GAULA* and those belonging thereto are involved in their persecution and harassment, through illegal telephone tapping and through the disappearance of their two fellow

organization members" and that there is no explanation why the prosecuting Office "has not been able even to hear the free and spontaneous accounts of the facts by the members of the *GAULA*";

- b) "last year an event happened that worsened the security situation of the persons benefiting from the instant measures, and it was the promotion to the rank of a General of Mr. Mauricio Santoyo Velasco", who "has been accused by the persons benefiting from the instant measures as the one behind serious aggressions to their security and particularly in his capacity as former director of the *GAULA* in Medellín he is linked by the beneficiaries to the disappearance of Claudia Monsalve and of Ángel Quintero, and he has also been singled out as responsible for the [...] telephone tapping [effected by such institution] in an arbitrary manner." The representatives pointed out that "the *Procuraduría General de la Nación* (Office of the National Attorney-General) carried out a disciplinary investigation of the then Colonel Santoyo and found him responsible for the telephone tapping and ordered him discharged", a decision which at present "is suspended";

29. That the Commission considered that "no material progress has been made in compliance" with this aspect of the provisional measures.

30. That at the public hearing, the State indicated that "a link has tried to be established between a Police officer who has been subjected to a penalty which at the moment is suspended by a Colombian judicial body, the *Consejo de Estado* (Council of State)", and that it has been wanted "with a quite questionable good faith, to link this with some disappearance cases", despite the fact that "the *Fiscalía General de la Nación* (Office of the National Prosecutor-General) has not found the mechanisms to call him to give his account of the facts."

31. That the Court considers particularly worrisome that, with the provisional measures being in force in the instant case since 1997, Ángel Quintero and Claudia Monsalve have been forcibly disappeared and that other extremely grave events, such as murders, have taken place, placing the members of ASFADDES at risk.

32. That the Court values and sets record of the commitment pledged by the State towards advancing with investigations (*supra* Considering paragraph No. 28). To such respect, it recalls that Article 1(1) of the Convention establishes the general undertaking by 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. Consequently, regardless of the existence of specific provisional measures, the State is found to be especially bound to guarantee the rights of persons in a risk situation and must advance the investigations necessary to establish the facts and, if it be the case, to punish those responsible.

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33. That in the Order of the Court of May 30, 2001 (*supra* Having Seen paragraph No. 14) the State was requested "[to] allow the petitioners to take part in planning and implementing these measures and, in general, [to] maintain them informed about progress [thereof]."

34. That the Court observes that in different reports filed by the parties several meetings effected for the purpose of advancing implementation of the instant provisional measures are mentioned. The Court considers that such harmonization efforts must be kept up and that all the parties must contribute in the best possible manner to implement the measures.

NOW THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority conferred upon it under Article 63(2) of the American Convention on Human Rights, under Article 25(2) of the Statute of the Court, and under Articles 25 and 29 of the Rules of Procedure of the Court,

DECIDES:

1. To call upon the State to adopt such provisional measures as may be necessary to protect the life and physical integrity of all the members of ASFADDES, by protecting the premises of the aforementioned organization.
2. To call upon the State to adopt the measures necessary in order to ensure the right to life and to physical integrity of María Eugenia López, Adriana Diosa, Astrid Manrique, Erik Arellana-Bautista, Daniel Prado, Silvia Quintero, María Eugenia Cárdenas, Álvaro Guisao-Usuga, Florentino Guisao-Usuga, Gloria Gómez, Verónica Marín and Nemecio Oquendo.
3. To remind the State that it must allow the petitioners to take part in planning and implementing the protection measures and that, in general, it must maintain them informed about progress regarding the measures ordered by this Court.
4. To request the representatives, according to what was set forth in Considering paragraph No. 24 of the instant Order, to forward within six months as from service upon them of the instant Order, specific information on the situation of María Eugenia López, Adriana Diosa, Astrid Manrique, Erik Arellana-Bautista, Daniel Prado, Silvia Quintero, María Eugenia Cárdenas, Álvaro Guisao-Usuga, Florentino Guisao-Usuga, Gloria Gómez, Verónica Marín and Nemecio Oquendo. In such report it must be clearly explained whether a situation of extreme gravity and urgency to avoid irreparable damage to such persons persists.
5. To request the State to file, no later than May 12, 2008, a first report about the provisional measures it will have adopted in compliance with the instant Order, and request the representatives of the beneficiaries and the Inter-American Commission on Human Rights to submit their comments on such report within a period of four and six weeks, respectively, as from the date notice of the report by the State be served upon them.

6. To request the State, after having reported pursuant to the foregoing operative paragraph, to continue reporting to the Inter-American Court of Human Rights every two months on the provisional measures adopted, and request the representatives of the beneficiaries of such measures, as well as the Inter-American Commission for Human Rights, to submit their comments within a period of four or six weeks, respectively, as from the date the reports by the State be served upon them.

7. To request the Secretariat of the Court to serve notice of the instant Order upon the State, upon the Inter-American Commission and upon the representatives of the beneficiaries of the instant measures.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary