

**Order of the
Inter-American Court of Human Rights*
Of November 25, 2008
Provisional Measures
Regarding the United States of Mexico
Matter of Leonel Rivero *et al.***

Having seen:

1. The Order issued by the President of the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court", "the Court" or "the Tribunal") on October 25, 2001 and the Orders issued by the Court on November 30, 2001; April 20, 2004; June 29, 2005 and November 24, 2005.

2. The public hearing on the instant provisional measures held at the seat of the Inter-American Court of Human Rights on February 5, 2008.¹

3. The Order of February 6, 2008, wherein the Tribunal, among other decisions, considered it necessary to continue receiving information on the situation of Leonel Rivero and his next-of-kin for a six-month period, after which said Court would evaluate the need to maintain the provisional measures ordered in his favor, and decided:

[...]

2. To request the State to maintain the measures necessary to protect the life and physical integrity of Leonel Rivero-Rodríguez, María de los Ángeles Espinosa-Sánchez, Augusto César Sandino Rivero-Espinosa, Luisa Amanda Rivero-Espinosa and María Katherina Rivero-Espinosa.

[...]

* Judge Sergio García-Ramírez, a Mexican national, excused himself from hearing this case, pursuant to Article 19 of the Statute and 19 of the Rules of Procedure of the Court, which was accepted by the Court. Therefore, Judge García-Ramírez did not take part in the deliberations and signing of this Order.

¹ The following were present at this hearing: (a) for the Inter-American Commission: Florentín Meléndez, delegate, and Mario López-Garelli and Lilly Ching-Soto, advisors; (b) for the State of Mexico: Armando Vivanco-Castellanos, Deputy General Director of the General Office of Human Rights of the Foreign Affairs Secretariat; José Ignacio Martín del Campo, International Litigation Director of the Foreign Affairs Secretariat; Rodrigo Espeleta-Alandro, Deputy General Director of the Human Rights Promotion and Defense Unit of the Government's Secretariat; Fernando Coronado-Franco, Deputy Legal and Human Rights Prosecutor of the Attorney General's Office of the Federal District, and Ana Luisa Ramírez-Hernández, Human Rights General Director of the Attorney General's Office of the State of Mexico; and (c) for the beneficiaries' representatives: Vanessa Coria, Luis Diego Obando and Soraya Long, of the Center for Justice and International Law (CEJIL) and Leonel Rivero-Rodríguez.

4. The Order of August 6, 2008, wherein the Court decided:

1. To call upon the State to maintain such measures as may be necessary to protect the life and physical integrity of Leonel Rivero-Rodríguez, María de los Angeles Espinosa-Sánchez, Augusto César Sandino Rivero-Espinosa, Luisa Amanda Rivero-Espinosa and María Katherina Rivero-Espinosa, until December 15, 2008, under the same conditions as those established by the Court in its Order of February 6, 2008.

[...]

5. Reports 37 to 41 of the United States of Mexico (hereinafter, "the State" or "Mexico") submitted on February 19, April 23, June 20, August 19 and October 20, 2008, as well as other briefs, wherein said State reported on the protection measures adopted in favor of the beneficiaries and referred to the investigation of the facts that prompted the adoption of provisional measures.

6. The briefs submitted by the representatives of the beneficiaries of the provisional measures (hereinafter, "the representatives") on March 28, May 27, July 18, September 24 and November 21, 2008, wherein they expounded their observations on the State's reports.

7. The briefs of the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") submitted on April 17, July 10, August 8 and October 8, 2008, wherein it expounded its observations on Mexico's reports.

Considering:

1. That Mexico has been a State Party to the American Convention on Human Rights (hereinafter "the Convention") since March 24, 1981, and that, pursuant to Article 62 thereof, it accepted the compulsory jurisdiction of the Court on December 16, 1998.

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 may, with regard to a case not yet submitted to it, order such provisional measures as it deems pertinent, at the request of the Commission.

3. That, in this regard, Article 25 of the Rules of Procedure of the Inter-American Court of Human Rights establishes that:

1. 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.

2. 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 general obligation of 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. To comply with this duty to guarantee rights, a State Party has the *erga omnes* obligation to protect all persons subject to its jurisdiction.²

5. That, under international human rights law, provisional measures are not merely preventive, in that they preserve a legal situation, but are rather fundamentally protective, since, inasmuch as they seek to avoid irreparable damage to persons, they protect human rights. Provided that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.³

6. That it is essential that the provisional measures are maintained in full force and effect until the Court orders their discontinuance and serves notice thereof upon the State.⁴

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7. That the representatives informed that facts like pursuits, telephone threats and the murders of two former bodyguards of the beneficiaries have not been investigated. Among other remarks, they expressed that: (a) regarding criminal proceedings 277/2004, about the car incident occurred on March 7, 2003 which involved the beneficiary's wife, the Public Prosecutor's Office acted in an irregular manner in releasing the alleged responsible person, disregarding sections 60 and 62 of the Criminal Code. This action not only helped the person who was probably responsible for the crime to elude justice but also allowed said crime to go unpunished and prevented the causes that gave rise to the incident from being elucidated; (b) regarding preliminary inquiry CUH-6T2/402/2005-03, about telephone threats against Mr. Rivero, on January 17, 2008 the Public Prosecutor for the Safety of Persons and Institutions confirmed the decision not to exercise the criminal action. Such decision was challenged by the beneficiary on February 15, 2008 through the filing of an appeal for legal

² *Cfr. Case of Velásquez-Rodríguez*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, Considering clause 3; *Matter of Carlos Nieto-Palma et al.* Provisional Measures regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of August 5, 2008, Considering clause 3; and *Matter of Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of May 2, 2008, Considering clause 19.

³ *Case of Herrera Ulloa*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering clause 4; *Matter of Carlos Nieto Palma et al*; *supra* note 2, Considering clause 4; *Matter of Urso Branco Prison*. Provisional Measures regarding Brazil; *supra* note 2, Considering clause 4.

⁴ *Cfr. Matter of Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of March 1, 2005, Considering clause 10; *Case of Caballero-Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause 6; and *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 30, 2007, Considering clause 17.

protection (*amparo*), which ended on November 6, 2008; (c) on April 14, 2005, at the Public Prosecutor's Office, the beneficiary reported he had suffered a pursuit on April 11, 2005 while he was accompanied by his two bodyguards. The agent of the Public Ministry in charge of the previous investigation, CUH-6T2/402/2005-03, sent the brief to the Attorney General's Office for its monitoring. They remarked the fact that the beneficiary had not been notified of the "initiation" of a preliminary inquiry by the federal authority prevented him from completing his complaint and assisting the Public Prosecutor in the investigation intended to establish the identity of those who had carried out the pursuit. Said omission, together with the decision to shelve the preliminary inquiry until new data appeared and the time that has elapsed, not only allow the perpetrators to go unpunished but also maintain the risk against the beneficiary; and (d) Noncommissioned officer Felipe de Jesús Pérez-Carmona, who reported to his superiors the pursuit suffered by Mr. Rivero on October 2, 2006, was murdered on November 13, 2007, without there being, to date, any satisfactory explanation of the circumstances of his death, or of whether or not it was related to the reporting of the pursuit. Additionally, it is not known whether the perpetrator has been identified, or whether the fact is likely to be related to the hostile acts against the beneficiary. Similarly, representatives made reference to the lack of investigation into the death of Federal Agent Jorge Fuentes-Villamar.

8. That they were concerned about the fact that the authorities responsible for prosecuting the crime and those in charge of administering justice had respectively taken and rubber-stamped the decision to conclude the inquiry by not exercising the criminal action, which keeps alive the existing risk to the beneficiary's safety. Likewise, because the hostile acts against him and his next-of-kin have been perpetrated at intervals, they live in constant fear of the consummation of the threats and intimidating acts, the last of which took place on November 8, 2006.

9. That in relation to implementation measures, the representatives stressed that the escort service is still being provided as established by the State: the beneficiary uses public transport and, as far as possible, security staff follow the vehicle in which the beneficiary is travelling in their own assigned vehicle, from Monday to Friday, during the time the beneficiary performs his professional activities. As regards the cellular telephones assigned to the beneficiaries, they pointed out that they were replaced on March 18, 2008 and have been working properly since April 25, 2008. As regards the surveillance tasks entrusted to the staff of the General Office for Public Security and Traffic of the State of Mexico (hereinafter, "the General Office for Security"), they informed that a series of anomalies have affected the service during the last eight weeks and those in charge of the surveillance have often left notices saying that they had been at the beneficiaries' domicile during their patrol and had found no members of the family. However, some family members were present at said domicile, so it is inaccurate to say that the patrol actually took place. The anomaly has been entered in the service logbook kept by the General Office for Security.

10. That, as regards the investigation of the facts that prompted the adoption of provisional measures, the Commission urged the State to conduct it with due diligence. It considered that, insofar as the facts have not been elucidated and those responsible have not been identified, it cannot be concluded that the risk to the beneficiaries, as the Court timely acknowledged it, has been eradicated. As regards protection measures, the Commission was pleased to take cognizance of the implementation of different measures in favor of the beneficiaries.

11. That the State, in relation to the failure to investigate several facts, expressed, among other remarks, that: (a) criminal proceedings 227/2004 are pending before the Third Criminal Court for Minor Crimes of Ecatepec and deal with the crime of injuries and damage to property. The investigating authority has determined that it was a car accident and no serious injuries were sustained, and the Public Prosecutor's Office has released the accused, since the crime is described by law as a culpable or negligent crime not punishable by imprisonment. After 80 attempts to locate the accused, in order to continue the proceedings, it proved impossible to find him, so on June 11, 2007, the above-mentioned Court discharged the accused under the statute of limitations; (b) in the preliminary inquiry CUH-6T2/403/2005-03, concerning telephone threats against Mr. Rivero, it was decided not to exercise the criminal action. Hence, the beneficiary lodged an appeal for legal protection (*amparo*) with the Tenth District Court of Amparo for Criminal Matters. Under the Mexican Amparo Law, before delivering a judgment a constitutional hearing must be held, which hearing took place on August 7, 2008, so the relevant judgment will be handed down soon; (c) as regards inquiry CUH-6T2/402/05-03, mentioned by Mr. Rivero, a request for shelving it was filed on June 20, 2006 and authorized on June 21; and (d) in relation to the investigation of the murder of Felipe de Jesús Pérez-Carmona, former bodyguard of the beneficiary, the State noted that he was murdered nine months after ceasing to work as an escort of the beneficiary and there is no link or cause connecting this fact and the provisional measures. As regards the death of Federal Agent Jorge Fuentes-Villamar, which took place while on duty as the beneficiary's bodyguard, the Attorney General of the Federal District investigated the relationships between this murder and the threats received by the beneficiary and found no evidence from which to infer any linkage between both facts.

12. That, finally, as regards implementation measures, the State remarked that it properly protected the lives and physical integrity of the beneficiaries, inasmuch as the cellular telephones were in good working condition and escort and patrol services were being provided as agreed with the beneficiaries. It added that surveillance tasks were still being performed and that police officers had actually visited the beneficiary's domicile, as recorded in the relevant notices. Notwithstanding the foregoing, a meeting was to be held between the beneficiary and the Administrative Unit to take cognizance of the beneficiary's observations. Likewise, it requested the beneficiary to address any observations on the patrol service to the Human Rights Promotion and Defense Unit of the Government's Secretariat.

13. That provisional measures are of an exceptional nature and are therefore ordered in relation to the need for protection. Once ordered, said measures must be maintained only if the Court considers that the basic conditions of extreme gravity and urgency and prevention of irreparable damage to the rights of the persons said measures are intended to protect continue to exist.⁵

14. That it can be inferred from the briefs submitted by the State and from the observations made by the representatives and the Inter-American Commission that in

⁵ Cfr. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of March 14, 2001, Considering clause 3; *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding Venezuela; *supra* note 2, Considering clause 16; and *Case of Mapiripán Massacre*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of May 3, 2008, Considering clause 7.

the last two years since November 8, 2006, the beneficiaries have not reported any threats or acts endangering their lives or physical integrity, but have rather referred to matters pertaining to the investigation of the facts that prompted the adoption of these provisional measures.

15. That, notwithstanding some difficulties in the implementation of the provisional measures, the Tribunal observes that during the term they have been in force, the State has taken different steps to protect Leonel Rivero-Rodríguez, María de los Ángeles Espinosa-Sánchez, Augusto César Sandino Rivero-Espinosa, Luisa Amanda Rivero-Espinosa and María Katherina Rivero-Espinosa, such as escort and patrol services and the provision of cellular telephones with emergency telephone numbers.

16. That the State has complied with its duty to report to the Tribunal regularly on the steps taken to implement the instant measures.

17. That, as has been noted by the Court in other requests for provisional measures, it cannot consider the merits of arguments pertaining to issues other than those strictly related to the extreme gravity and urgency and the need to avoid irreparable damage to persons. Such other issues may only be properly brought before the Court through contentious cases or requests for advisory opinions.⁶

18. Para el Tribunal las manifestaciones de los representantes en el sentido de que las investigaciones penales deben continuar o la alegada falta de información sobre las mismas, no constituyen circunstancias de extrema gravedad y urgencia que ameriten el mantenimiento de las actuales medidas provisionales⁷. En todo caso, el análisis de la efectividad de las investigaciones y procedimientos referentes a los hechos que motivaron estas medidas provisionales correspondería al examen del fondo del caso en conocimiento de la Comisión Interamericana⁸.

19. That in light of the foregoing, the Tribunal believes that, in the instant case, the circumstances of extreme gravity and urgency and the need to avoid irreparable damage to the rights of beneficiaries that prompted the adoption of the instant provisional measures have ceased to exist.

⁶ Cfr. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, Considering clause 6. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering clause 10; and *Matter of "Globovisión" Television Station.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 21, 2007, Considering clause 14.

⁷ Cfr. *Matter of Gallardo-Rodríguez.* Provisional Measures regarding the United States of Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, Considering clause 11, and *Case of the Constitutional Court,* Provisional Measures regarding Peru; *supra* note 5, Considering clause 4

⁸ On August 22, 2007, the Inter-American Commission, in response to the Court's request for information regarding the procedural status of the instant case before said body, reported that "the petition was assigned number 12,229 'Digna Ochoa et al.' and it is in the admissibility stage". Cfr. *Matter of Pilar Noriega et al.* Provisional Measures regarding the United States of Mexico. Order of the Inter-American Court of Human Rights of February 6, 2008, Considering clause 14.

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 rescind the provisional measures ordered by the Inter-American Court of Human Rights in its Orders of June 29, 2005, November 24, 2005, February 6, 2008 and August 6, 2008, in favor of Mr. Leonel Rivero-Rodríguez, María de los Ángeles Espinosa-Sánchez, Augusto César Sandino Rivero-Espinosa, Luisa Amanda Rivero-Espinosa and María Katherina Rivero-Espinosa.
2. To request the Secretariat of the Court to serve notice of this Order upon the State, the Inter-American Commission on Human Rights and the representatives of the beneficiaries.
3. To close this matter.

This Order has been issued in Spanish and English, the Spanish version being authentic, in San José, Costa Rica, in November 25, 2008.

Cecilia Medina Quiroga
President

Diego García-Sayán

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary