

**Order of the
Inter-American Court of Human Rights
of January 26, 2009
Provisional Measures
regarding the Bolivarian Republic of Venezuela
Matter of Carlos Nieto-Palma *et al.***

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court" or "the Court") of July 9, 2004, whereby the Court ordered provisional measures for the benefit of Carlos Nieto-Palma and his next of kin Ivonne Palma-Sánchez, Eva Teresa Nieto-Palma and John Carmelo Laicono-Nieto.

2. The Order of the Inter-American Court of September 22, 2006, whereby the Court reiterated its order that the State maintain any measures it may have adopted and take forthwith such other measures as may be necessary to effectively protect the life, integrity and liberty of Carlos Nieto-Palma, as well as the life and integrity of Ivonne Palma-Sánchez, Eva Teresa Nieto-Palma and John Carmelo Laicono-Nieto.

3. The Order of the Inter-American Court of July 3, 2007, whereby, among other things, the Court lifted the provisional measures it had ordered in its Order of September 22, 2006 for the benefit of Eva Teresa Nieto-Palma and John Carmelo Laicono-Nieto, and reiterated that the State was to maintain any measures it had adopted and to take forthwith such measures as may be necessary to effectively protect the life, physical integrity and personal liberty of Carlos Nieto-Palma, as well as the life and physical integrity of Yvonne Palma-Sánchez.

4. The Order of the Inter-American Court August 5, 2008, through which, *inter alia*, the Court decided:

1. To require the State to maintain the necessary measures to protect the life and personal integrity of Carlos Nieto Palma and Ivonne Palma Sánchez, for at least six months from notification of this Order, following which the Court will assess the pertinence of maintaining them in force.

2. To request Carlos Nieto Palma or his representatives to submit, by October 10, 2008, at the latest, their observations on the existence and continuation of the assumptions of extreme gravity and urgency and of possible irreparable damage that justify the need to maintain these provisional measures in force.

3. To require the Inter-American Commission on Human Rights to present to the Inter-American Court of Human Rights its observations on the observations of Mr. Nieto Palma or his representatives that were requested in the preceding operative paragraph, within two weeks of receiving them. Also, to require the State to present a report to the Inter-American Court of Human Rights on the observations of Carlos Nieto Palma and Ivonne Palma Sánchez and of the Inter-American Commission on Human Rights, within two weeks of receiving them.

[...]

5. The briefs submitted by the Bolivarian Republic of Venezuela (hereinafter, "Venezuela" or "the State") on September 8 and December 10, 2008.

6. The briefs submitted by Carlos Nieto-Palma (hereinafter, "Mr. Nieto-Palma" or "the beneficiary") on August 12 and October 29, 2008, and on January 23, 2009.

7. The briefs of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of September 2, 2008, and January 15, 2009.

CONSIDERING:

1. That Venezuela has been a State Party to the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") since August 9, 1977, and that it recognized the jurisdiction of the Court on June 24, 1981, in accordance with Article 62 thereof.

2. That Article 63(2) of the Convention turns the State's adoption of provisional measures as directed by this Court into an obligation, inasmuch as, under the basic principle of State responsibility as supported by international case law, States must comply with their conventional obligations in good faith (*pacta sunt servanda*).¹

3. That, as far as provisional measures are concerned, the jurisdiction of the Court is dependent upon the existence of a situation of extreme gravity and urgency that might cause irreparable harm to persons.

4. That these provisional measures were granted by virtue of the Order of July 9, 2004, based on the *prima facie* finding of a threat to the rights to life, personal integrity and freedom of expression of Mr. Nieto-Palma, as well as the life and personal integrity of his mother, Ivonne Palma-Sánchez, considering, among other things, the facts that allegedly took place on June 6, 2003, when Mr. Nieto-Palma was visited by three political police officials of the *Dirección de los Servicios de Inteligencia y Prevención* [Department of Intelligence and Prevention Services] (hereinafter, "DISIP"), an agency reporting to the Ministry of the Interior and Justice, who informed him that they had been ordered to visit him at his house and wanted to talk to him. The beneficiary was questioned, among other things, about his work as a human rights advocate, his work at Venezuelan prisons and the funding of his non-governmental organization "Una Ventana a la Libertad," an NGO devoted to human rights advocacy and promotion in Venezuelan prisons. Also, the measures were ordered due to the alleged threat he received on June 20, 2004, when certain neighbors from his building gave him a pamphlet that literally read: "[...] you'll never live to tell about it [...]".

5. That, through its Order of August 5, 2008, the Court did, among other things, order the State to maintain and adopt such measures as may be necessary to protect the life, personal integrity and personal liberty of Carlos Nieto-Palma, and the life and integrity of Ivonne Palma-Sánchez, for a period of at least six months as

¹ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of June 14, 1998, sixth considering clause; *Matter of Lysias Fleury*. Provisional Measures regarding Haiti. Order of the Court of November 25, 2008, fifth considering clause; and *Matter of "El Nacional" and "Así es la Noticia" newspapers*. Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, second considering clause.

from the date of notification of said Order, following which the Court would evaluate whether the measures should remain in place (*supra* Having Seen clause No. 4).

*

* *

6. That, as regards the implementation of the measures ordered by the Court, the State referred the Court to the official records of the state officials' visits to the residence of Mr. Nieto Palma in May, June, July, August and September 2008.²

7. That, among other things, Mr. Nieto Palma stated that:

a) The records produced by the State show certain irregularities, as there are "forged records that were not signed by [him], blank records bearing no signature at all, records noting that there was nobody at [his] house and records he does not [know] whose signatures they bear, because he does not know that person;"

b) The State has failed to abide by the agreement signed on March 14, 2008 at the offices of the Thirty-Fourth National Prosecutor's Office, which provided that the visits would take place at 7:00 p.m. and that the notice could be signed by him, his mother or the building's concierge;

c) He again stated that on March 13, 2008 he allegedly received "verbal threats [...] from the Metropolitan Police officers who were supposedly responsible for his 'custody,'" without specifying what these threats consisted of, and claimed that the social communication media had reported these occurrences and that he was visited by a representative of the Department of Legal Services' Ombudsman Office, who wrote up the relevant record. Moreover, he reported "the occurrences to the Thirty-Fourth National Prosecutor's Office, by telephone, but has received no response so far." He noted that the Metropolitan Police Department, formerly under the purview of the Metropolitan Municipality of the Capital District, is now attached to the Ministry of the Interior and Justice, to which DISIP reports, and that it was DISIP officials who intimidated and threatened him, this in addition to the fact that the General Directorate of Prisoner Rehabilitation and Custody also reports to said Ministry. According to Mr. Nieto-Palma such agency "repeatedly [...] accuses the organizations who work within the penitentiary system of being agents financed by the North American Government and that [they] are the organizers of the protests that take place in our prisons on a daily basis," which he views as an act of intimidation against [the] work of [h]uman [r]ights advocates". The beneficiary thus believes "that the threats against [his] person continue to be latent and are publicly repeated by high Government officials," and that the change is not a "mere administrative formality," since the Metropolitan Police department is no longer performing its duties; and

d) He repeated that the State has entirely failed to implement the measures of protection ordered for his own benefit and for the benefit of his

² In accordance with the agreement of March 14, 2008 between the beneficiary and the State, the measures of protection consist of state officials' visits to Mr. Nieto Palma's residence.

mother Ivonne Palma-Sánchez in the various orders of the Court. He also noted that he has no police custody or visits whatsoever.

8. That the Inter-American Commission stated, *inter alia*, that the security rounds appear to be taking place on a regular basis, but that on several occasions the beneficiary could not be located at his home. Moreover, it finds it essential that, in writing up the records, the agreement reached by the parties at the March 14, 2008 meeting be fully complied with, so that, should Mr. Nieto-Palma not be home when the police officers are making their rounds, the record will be signed by his mother or the condominium's concierge.

9. That the Court has verified that the main measure of protection implemented by the State is the one consisting of visits to Mr. Nieto-Palma's home.

10. That this Court appreciates the efforts undertaken by the State, considering the records it has submitted in connection with the visits at the beneficiary's house (*supra* Considering clause No. 6). However, this Court notes that Mr. Nieto-Palma claimed that the State has not properly complied with the measures, as sometimes the visits take place at times other than the agreed-upon time, and the beneficiary is not home. Furthermore, the beneficiary stated that the records accompanying the State reports are blank or fail to conform to the agreement of March 14, 2008, an allegation that has not been contested by the State.

*

* *

11. That, as regards the Court's request that the beneficiaries be allowed involvement in the measures, following the Order of August 5, 2008, Mr. Nieto-Palma stated that, since the State's Agent was changed, "he has had no contact with any representative of the [...] State, and, therefore, the coordinated, joint work between the State and [himself] is not taking place." Neither the Commission nor the State has expressly addressed this issue (*supra* Having Seen clauses Nos. 5, 6 and 7).

*

* *

12. That, regarding the investigation of the facts that led to the adoption of the provisional measures, among other things the State noted that:

a) "to have these unnecessary preventive measures remain in full force and effect, citizen Carlos Nieto reported the alleged forging of the records of the visits by officials attached to the [p]olice [c]orps in charge of implementing the measure of protection which the Inter-American Court ordered for his benefit;"

b) The Eighth Prosecutor's Office of the Judicial District of the Caracas Metropolitan Area ordered the opening of the investigation on May 20, 2008, and was currently taking steps that were necessary for and conducive to elucidating the facts of the case;

c) In accordance with the laws of Venezuela, on August 7, 2008, the Attorney General's Office commissioned the Caracas Municipal Police department with serving a summons on Mr. Nieto-Palma, who appeared at their offices on August 19, 2008 to provide his statement regarding the facts under investigation; and

d) The Eighth Prosecutor's Office of the Judicial District of Caracas Metropolitan Area ordered a technical comparison of documents by an expert on the handwritten documents provided by Mr. Nieto-Palma, and it is currently awaiting the results in order to interview persons related to such investigation. The investigation is at the preparation stage, so that once the evidence has been gathered the relevant final order will be issued.

13. That, among other things, the beneficiary stated that:

a) The Nineteenth Criminal Court of First Instance, with monitoring functions, of the Metropolitan Areas of Caracas urged the Attorney General's Office to open an investigation of the records "forged by [m]etropolitan [p]olice officials regarding 'alleged visits' to [him] on [O]ctober 24, 2007," which was entrusted to the Eighth Prosecutor's Office of the Judicial District of Caracas, at which he appeared on August 15, 2008 to make a statement, and has received no information whatsoever since then; and

b) "he feels defenseless, even more so considering that a proceeding has been initiated against the Metropolitan Police department over the forged records, which could lead to [retaliations] against [him] by the police force."

14. That the Commission stated that it had taken note of the fact that Mr. Nieto-Palma had claimed to feel defenseless, and that such feeling was later on worsened by the investigation which the Eighth Prosecutor's Office of the Judicial District of Caracas is currently conducting. Therefore, through various briefs, the Commission expressed that it is necessary for the Court to ask the beneficiary to "submit detailed, objective information evidencing the persistence of the risk that led to the order of protection;" and for it to ask the State to submit information regarding the progress made in the investigation into the attacks and verbal threats made against Mr. Nieto-Palma by the police officers in charge of his protection.

15. That, considering the above statements, the Court notes that an investigation is currently underway over the "alleged forging" of various records of visits by state officials. Such facts derive from alleged irregularities in the context of the implementation of the provisional measures. **In this regard**, as done in other cases, the Court finds it appropriate to state that the alleged State's failure to investigate does not necessarily, by itself, amount to a situation of extreme gravity and urgency warranting the maintenance of provisional measures;³ however, any violations of the Convention resulting from the alleged ineffectiveness of the investigations must be analyzed in the relevant contentious case, not in the context of the provisional measures,⁴ unless the failure to investigate clearly relates to the extreme gravity posed to life and physical integrity.

³ Cf. *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Court of March 14, 2001, fourth considering clause; *Matter of "El Nacional" and "Así es la Noticia" newspapers*, *supra* note 1, thirty-sixth considering clause; and *Matter of the Gómez-Paquiyaury Brothers*. Provisional Measures regarding Peru. Order of the Court of May 3, 2008, seventh considering clause.

⁴ Cf. *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of Fundação CASA*. Provisional Measures regarding Brazil Order of the Court of July 3, 2007, seventeenth considering clause; *Matter of Millacura-Llajpén et al.* Provisional Measures regarding Argentina. Order of the Court of February

*
* *
*

16. That this Court notes that, in his brief of January 27, 2006, Carlos Nieto-Palma stated that the threats that led to the adoption of the provisional measures had come to an end, but that they remained latent because of his work as a human rights activist. Later on, the beneficiary stated that, on May 13, 1008, he was the victim of acts of intimidation by state officials, without objectively explaining in detail what such acts consisted of (*supra* Considering clause No. 7).

17. That, upon analyzing the observations submitted by the beneficiary on August 12 and October 29, 2008, and January 23, 2009, the Court stresses the similarity of Mr. Nieto-Palma's statements in such documents, even though the documents of October 29, 2008 and January 23, 2009 were submitted in response to the Court's request for information regarding his current risk situation, in accordance with the third operative paragraph of the Order of August 5, 2008 (*supra* Having Seen clause No. 4). In his recent communication of January 23, 2009, the beneficiary once again stated that the Metropolitan Police department is not fulfilling its obligations under the agreement of March 14, 2008 (*supra* Considering clause No. 7), as such agreement does not provide that "the records can be left blank, or just reflect the fact that he was not home, or even less bear the signature of an unknown person, or much less did the agreement authorize the forging of a public document."

18. That in its comments of November 26, 2008, the Inter-American Commission stated, among other things, that in spite of Mr. Nieto-Palma's statements in his observations, he should be asked to provide detailed, objective information evidencing the persistence of the risk that led to the order of protection. Moreover, in its two latest briefs the State did not address this issue specifically (Having Seen clause No. 5).

19. That the beneficiary has made reference to the current context of alleged intimidation against the work of human rights advocates in Venezuela. In this regard, it is the Court's view that such alleged context is not sufficient to warrant keeping the provisional measures in place if there are no specific facts that will allow consistent conclusions on the effects of such context in the specific matter at hand.

20. That provisional measures are exceptional in nature, are ordered based on the need for protection and, once ordered, must be maintained in force if the Court considers that the basic requirements of the situation of extreme gravity and urgency and the need to avoid irreparable damage to the rights of the persons protected by said measures still exist.⁵ In this regard, the Court notes that submitting observations or information in connection with compliance with the provisional measures ordered by the Court is a duty of the Commission or the beneficiaries of said provisional measures and, as the case may be, of the

6, 2008, sixteenth considering clause; and *Matter of "El Nacional" and "Así es la Noticia" newspapers*, *supra* note 1, thirty-sixth considering clause.

⁵ *Cf. Case of the Constitutional Court*, *supra* note 3, third considering clause; *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of Fundação CASA*. Provisional Measures regarding Brazil. Order of the Court of November 25, 2008, sixth considering clause; and *Case of the Gómez-Paquiyaury Brothers*. Provisional Measures regarding Peru. Order of the Court of January 22, 2009, fourteenth considering clause.

representatives. In the instant matter, in accordance with the Order of August 5, 2008, it is the Court's view that no information has been submitted that proves that the situation of extreme gravity and urgency and the need to avoid irreparable damage that existed back when the provisional measures were ordered for the benefit of Mr. Carlos Nieto-Palma and Ms. Ivonne Palma-Sánchez still persist.

21. That the Court notes that lifting such provisional measures does not mean that the State has fully complied with the orders of the Court in connection therewith.

22. That, irrespective of the provisional measures ordered by the Court in this matter, the State has an ongoing, permanent duty to comply with its general obligations under Article 1(1) of the American Convention to respect the rights and liberties therein recognized and to guarantee their free and full exercise to each and every person under its jurisdiction.⁶ Moreover, it is worth noting that because this is a matter regarding provisional measures, the Court must consider only and strictly those arguments that directly relate to the extreme gravity and urgency and the need to avoid irreparable damage to persons. Any other fact or argument can be analyzed and adjudicated by the Court only at the merits stage of a contentious case.⁷

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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

DECIDES:

1. To rescind the provisional measures ordered by the Court in its Order of July 9, 2004, and consider such measures ended.
2. To request the Court's Secretariat to notify this Order to the State, the Inter-American Commission on Human Rights and the beneficiaries or their representatives.
3. To close this file.

⁶ Cf. *Case of Velásquez-Rodríguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, third considering clause; *Matter of "El Nacional" and "Así es la Noticia" newspapers*, *supra* note 1, thirty-ninth considering clause; and *Matter of Leonel Rivero et al.* Provisional Measures regarding Mexico. Order of the Court of November 25, 2008, fourth considering clause.

⁷ Cf. *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 29, 1998, sixth considering clause; *Matter of the Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, tenth considering clause; and *Matter of "El Nacional" and "Así es la Noticia" newspapers*, *supra* note 1, twenty-fifth considering clause.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel 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