

**Order of the
Inter-American Court on Human Rights
of February 3, 2010
Provisional Measures
Regarding El Salvador
Case of García Prieto *et al.* v. El Salvador**

Having Seen:

1. The Order of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Tribunal”) of January 27, 2007, in which it decided:

1. To ratify the Order of the President [...] of December 3, 2006.
2. To request the State to maintain the measures that it had adopted, and to adopt immediately the measures necessary to protect the life and personal integrity of Mr. Ricardo Alberto Iglesias Herrera.
3. To request the State to maintain the measures necessary to protect the life and personal integrity of Gloria Giralt de García Prieto, José Mauricio García Prieto Hirlemann, María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez, Matilde Guadalupe Hernández de Espinoza and José Roberto Burgos Viale.
4. To request the representatives of the beneficiaries of the provisional measures to inform [...] in an specific and detailed manner about the necessity of the adoption of provisional measures in favor of [David Ernesto Morales Cruz, Alina Isabel Arce, María Julia Hernández and Mauricio José Ramón Gaborit Pino], and about the current situation of Pedro José Cruz Rodríguez.
5. To request the Inter-American Commission on Human Rights and the State to [...] submit all the observations that they deem pertinent in that respect.
6. To request the State to perform all the pertinent procedures so the protective measures ordered [...] are planned and implemented with the participation of the beneficiaries or their representatives, such that the measures are provided in a diligent and effective manner and that, in general, the State keep them informed about the advance of their execution.
7. To request the State to investigate the facts that motivated the adoption of these provisional measures, to identify the responsible persons and, in such case, to establish the corresponding sanctions.

[...]

Judge Diego García-Sayán excused himself from hearing the present case, according to Articles 19(2) of the Statute and 19 of the Rules of Procedure of the Court applicable at that moment (currently Article 21), so he did not take part in the issuance of the Judgment nor of the present Order. For such reason, Judge García-Sayán delegated the Presidency, in the terms of Article 4(2) of the Rules of Procedure, to the Vice-President of the Tribunal, Leonardo A. Franco, who was the Exercising President for the present case.

2. The Order of the President of December 18, 2009, in which it decided to summon the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), the Republic of El Salvador (hereinafter "El Salvador" or "the State"), and the representatives of the beneficiaries of the provisional measures (hereinafter "the representatives") to a public hearing with the purpose of obtaining information from the State about the implementation of the provisional measures to protect the beneficiaries and, in particular, about the existence of extreme gravity and urgency to avoid irreparable damages to the beneficiaries and the necessity of maintaining their validity, as well as to listen to the observations of the Commission and the representatives in this sense.

3. The allegations of the parties at the public hearing regarding the present provisional measures, carried out on January 28, 2010, at the venue of the Tribunal.¹

Considering:

1. That El Salvador is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since June 23, 1978, and, in accordance with Article 62 of the same, recognized the adjudicatory jurisdiction of the Inter-American Court on June 6, 1995.

2. That Article 63(2) of the Convention demands that in order for the Court to provide provisional measures, three conditions must coincide: i) "extreme gravity;" ii) "urgency;" and iii) that they lead to "avoid irreparable damage to persons." These three conditions must co-exist and must be present in every situation in which the intervention of the Tribunal is requested. In the same way, the three conditions described must persist for the Court to maintain the protection ordered. If one of the conditions has ceased to exist, the Tribunal will evaluate the appropriateness of continuing the protection ordered.²

3. That in accordance with its jurisdiction in the framework of provisional measures, the Court must consider only the arguments that relate strictly and directly with extreme gravity, urgency, and the necessity to avoid irreparable damage to persons. In this way, in order to decide maintaining the validity of the provisional measures, the Tribunal must analyze if the situation of extreme gravity and urgency that led to the adoption of the measures still exists, or if new circumstances of extreme gravity and urgency merit their maintenance. Any other issue can only be heard by the Court as a contentious case.³

¹ The following people appear at said hearing: for the Inter-American Commission, Lilly Ching and Silvia Serrano, advisors; for the representatives of the beneficiaries of the provisional measures, Benjamin Cuellar Martínez, of IDHUCA, Henry Fino Solórzano, of IDHUCA, and Ms. Gisela de León of CEJIL; and for the State: David Ernesto Morales Cruz, Agent and General Director of Human Rights of the Ministry of Foreign Relations; Sebastián Vaquerano, Alternate Agent and Ambassador of the Republic of El Salvador in Costa Rica, and Ms. Tania Camila Rosa, Sub Director of Human Rights of the Ministry of Foreign Relations.

² *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, considering fourteenth; *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Court of November 17, 2009, considering tenth; and *Case of the Rochela Massacre*. Provisional Measures regarding Colombia. Order of the Court of November 19, 2009, considering fourteenth.

³ *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Court of August 10, 1998, considering sixth; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*. Provisional Measures regarding Venezuela. Order of the Court of November 24, 2009,

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4. That in conformity with the Orders of the Inter-American Court of September 26 and December 3, 2006, and January 27, 2007, the State must, *inter alia*, adopt the provisional measures with the object of: a) protecting the life and personal integrity of the beneficiaries (*supra* Having Seen 1), b) investigating the facts that motivated the adoption of the provisional measures, and c) planning and implementing the measures with the participation of the beneficiaries of the same or their representatives.

5. That as a result of that provided in the Order of the President of December 18, 2009, and taking into account the information presented by the parties at the public hearing held on January 28, 2010, the Court referred to the following aspects in relation to the implementation of the provisional measures of the present matter.

Regarding the implementation of the provisional measures with the participation of the beneficiaries or their representatives.

6. That the State manifested that it regretted the unjustified situations that previously had been suffered by the members of the García Prieto Giralt family and made promises that it would not happen again, and requested that the representatives send their apologies to the García Prieto Giralt family. In relation to Mr. Mauricio García Prieto and Ms. Gloria Giralt de García Prieto, the State manifested its will to provide the measures of protection with trustworthy personnel selected by the beneficiaries; such personnel will offer the training and resources necessary to exercise such functions. Also, the State provided that, meanwhile, it grants protection by the National Civil Police. The State promised to offer such measures of security every day from the eight hours to the twenty hours with the possibility of requesting special protection when required. The State concluded that the hope remained that Mr. García Prieto and Ms. Giralt and their representatives make a proposal of persons in their confidence that may make up the permanent security. Regarding Ms. María de los Ángeles García Prieto de Charur and Mr. Benjamín Cuéllar Martínez, the State provided that they receive protection and it will maintain such services of security. Regarding Mr. Ricardo Iglesias Herrera –who relied on a direct contact to the interior of the National Police by telephone – the State promised to mend immediately the telephone number for emergency help that was provided to him, which had been changed without notice.

7. That the representatives pointed out that Ms. María de los Ángeles García Prieto de Charur and Mr. José Benjamín Cuéllar Martínez received protection. Regarding Mr. Mauricio García Prieto and Ms. Gloria Giralt de García Prieto, they provided that during the month of December, they had begun to offer security to the parents of Ramón Mauricio García Prieto, through personnel of the National Civil Police. In this respect, they expressed that they are not satisfied with the security

considering fifth; and *Matter of the Urso Branco Prison*. Provisional Measures regarding Brazil. Order of the Court of November 25, 2009, considering fourth.

being offered by the elements of said dependency, but manifested their consent so that it can be provisionally given in the manner offered by the State. In this respect, they indicated that they had supported a meeting with the representatives of the National Civil Police and the advisor of the Director, in which it was established a proposal in order to incorporate personnel that were not police with the trust of Mr. and Mrs. García Prieto, and training and hiring by the National Civil Police. Regarding Ms. Matilde Guadalupe Hernández de Espinoza, they signaled that "she did not accept the measures that had been adopted since the beginning," and that she is currently an official of the State and has separated from the Institute of Human Rights of the Central American University "José Simeón Cañas" (hereinafter "IDHUCA") and consequently, of the present case. Also, the representatives manifested that they passed along the apologies of the State and they will make them extensive to the García Prieto family.

8. That the Commission manifested that it valued the manifestations of good will made by the State, as well as the rapprochement between the parties. Also, it reiterated that it was reasonable and necessary to maintain the provisional measures in virtue of the risk that persists due to the relation that existed between the investigation and the threats.

9. That the Tribunal finds it timely to reiterate that provisional measures have an exceptional character, and are ordered having regard to the basic need of protection and, once ordered, must be maintained as long as the Court considers that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to the rights of the persons protected by them subsist.⁴

10. That due to the information and observations presented by the parties regarding the actual state of the situation of extreme gravity and urgency, the Tribunal considers it pertinent to maintain in effect the provisional measures in favor of Gloria Giralt de García Prieto, José Mauricio García Prieto Hirlemann, María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez and Ricardo Alberto Iglesias Herrera.

11. That the Court observes that in the manifestations made by the parties, it is seen that a rapprochement has been carried out as well as a series of proposals in relation to the form of the provisional measures that must be implemented by the State in favor of Ms. Gloria Giralt de García Prieto and Mr. José Mauricio García Prieto Hirlemann. In this sense, the Court finds it pertinent that the State inform in a periodic, specific, and detailed manner regarding the implementation of the measures.

Regarding the investigation of the facts that motivated the adoption of the provisional measures.

12. That the State provided that it carried out "the investigation of eight telephone numbers that appeared related with the threats [...] without having

⁴ *Case of the Constitutional Court*. Provisional Measures regarding Peru. Order of the Court of March 14, 2001, considering third; *Case of Integrantes del Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP)*. *Plan de Sánchez Massacre*. Provisional Measures regarding Guatemala. Order of the Court of July 8, 2009, considering eighteenth; and *Case of Helen Mack Chang et al.* Provisional Measures regarding Guatemala. Order of the Court of November 16, 2009, considering fourteenth.

success[,] for which it will [be] informing [the Court] of the advances." Also, it admitted its responsibility because it had not produced a sufficient advance in the investigations and promised to negotiate the internal coordination necessary that will permit progress of the same. In this respect, it did not refer specifically to the actual state of the investigation of the threats and harassments suffered by the beneficiaries.

13. That for its part, the representatives reiterated that the investigations ordered in the Judgment of Preliminary Exceptions, Merits, Reparations, and Costs, issued by the Court on November 20, 2007, have not advanced, the situation of risk will continue regardless that in the last few months no threats have occurred.

14. That the Commission agreed with the representatives that a situation of risk of the beneficiaries will continue, so that "there is a relationship between the investigation and the movement of the case [...] with the threats[,] because each time that [...] the case progresses a little on the national level or the international level, a new threat is produced," for which it considered it reasonable and necessary that the provisional measures be maintained.

15. That the Tribunal notes that the diligences that have been advanced in the investigation are not sufficient in order to determine the origin of the telephone calls that have constituted the acts of threats and harassment against the beneficiaries (*supra* Considering 9). In this respect, the Court considers that, independently of the existence of the provisional measures ordered by the Tribunal in the present case, the State has the constant and permanent duty to fulfill the general obligations that correspond to it under Article 1(1) of the American Convention to respect the rights and liberties recognized in it and to guarantee their free and full exercise to each person subject to its jurisdiction.⁵

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16. Regarding Mr. Roberto Burgos Viale and Ms. Matilde Guadalupe Hernández de Espinoza, the State requested that the provisional measures granted in their favor be lifted, in virtue that the first relinquished them and the second expressed that she was not interested in them. Notwithstanding, the State reiterated its will to grant them if they were ordered by the Court or the beneficiaries required them again.

17. That in this respect, at the public hearing of the matter of "Meléndez Quijano y otros," the representatives made known to the Tribunal that the beneficiary José Roberto Burgos Viale voluntarily relinquished the measures of security implemented by the State since the month of August 2007, making such relinquishment extensive to the present case. Referring to Ms. Hernandez, the representatives indicated that she is currently an official of the State, for which she has separated from IDHUCA, and as a consequence, from the present case.

⁵ *Case of Velásquez Rodríguez*. Provisional Measures regarding Honduras. Order of the Court of January 15, 1988, considering third; *Matter of Leonel Rivero et al.* Provisional Measures regarding Mexico. Order of the Court of November 25, 2008, considering fourth; and *Case of Helen Mack Chang et al.*, *supra* note 4, considering thirty-first.

18. That due to that expressed by the representatives regarding Mr. José Roberto Burgos Viales, and the information offered by the State and the representatives regarding Ms. Matilde Guadalupe Hernández de Espinoza, this Court considers that the situation of the beneficiaries mentioned are no longer within the parameters provided in Article 63(2) of the Convention, for which the Court considers pertinent to lift the provisional measures adopted in their favor.

Therefore:

The Inter-American Court of Human Rights,

In the exercise of its powers conferred in Article 63(2) of the American Convention of Human Rights and Articles 27 and 31 of its Rules of Procedure,

Resolves:

1. To rescind the provisional measures in favor of the beneficiaries José Roberto Burgos Viale and Matilde Guadalupe Hernández de Espinoza.
2. To require the State to maintain the measures that it has adopted and to adopt all the measures that are necessary to protect the life and personal integrity of Gloria Giralt de García Prieto, José Mauricio García Prieto Hirlemann, María de los Ángeles García Prieto de Charur, José Benjamín Cuéllar Martínez and Ricardo Alberto Iglesias Herrera.
3. To require the State to carry out the implementation of the provisional measures of common agreement with the beneficiaries or their representatives for the effective protection of their rights.
4. To reiterate to the State to continue informing the Inter-American Court of Human Rights each two months regarding the provisional measures adopted; to require the beneficiaries of these measures or their representatives to present their observations within a time period of four weeks beginning from the notification of the reports of the State; and the Inter-American Commission on Human Rights to present their observations to said reports of the State within a time period of six weeks beginning from their reception.
5. To require the Secretary of the Court to notify the present Order to the State, to the Inter-American Commission on Human Rights, and to the representatives of the beneficiaries.

Leonardo A. Franco
President in exercise

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
Exercising President

Pablo Saavedra Alessandri
Secretary