

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
DECEMBER 10, 2010**

**REQUEST FOR PROVISIONAL MEASURES PRESENTED BY
THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
REGARDING VENEZUELA**

MATTER OF MARÍA LOURDES AFIUNI

HAVING SEEN:

1. The brief by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") dated November 30, 2010, and its annexes submitting a request to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") for provisional measures under Article 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Article 27 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), requesting that the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") protect the life and personal integrity of Ms. María Lourdes Afiuni. During the 140th Period of Sessions of the Commission, the petitioners ask that this situation be brought before the jurisdiction of the Inter-American Court, pointing to the situation of risk faced by Ms. Afiuni. Thus, through communication dated October 24, 2010, the petitioners presented information on Judge Afiuni's health situation and the allegedly deficient conditions of her detention. They also reiterated the information on the risks she faces due to threats from other individuals deprived of liberty whom the judge had presumably sent to prison in the exercise of her duties.

2. The background information presented by the Commission with its request for provisional measures, to wit:

a) In December 2009, Ms. María Lourdes Afiuni was serving in her position as judge with the 31st Lower Oversight Court of the Caracas Metropolitan Area Judicial Criminal Circuit. On December 11, 2009, Judge Afiuni was accused of the crimes of corruption, abuse of authority, facilitation of escape, and criminal conspiracy following her order, issued while a judge with that tribunal, of provisional freedom for an individual who had been under preventative detention for more than two and a half years. She issued that order on the day prior to the accusation against her. That same day, the President of Venezuela publicly referred to judge Afiuni as a "bandit" and requested her imprisonment and conviction;

b) On December 12, 2009, upon presentation of a request from the prosecutor against the judge, she was ordered to be placed under preventative detention and held in the National Institute for Female Corrections (hereinafter "INOF" according to

its Spanish acronym), a penitentiary holding inmates who had been sentenced by Judge Afiuni;

c) Ms. Afiuni's defense attorneys asked the competent authorities to establish the headquarters of the Directorate for Intelligence and Prevention Services (DISIP according to its Spanish acronym) as her place of detention in order for guarantees of her life and personal integrity to be provided.¹The judge in charge of the proceeding against her did not heed that request. Rather, he upheld the current place of detention, that being the INOF;

d) On December 15, 2009, the Commission received communication signed by Ligia Bolívar Osuna, Jesús Ollavares, Carlos Nieto Palma, Héctor Faúndez Ledesma and Sandy Guevara Ojeda (hereinafter "the petitioners"), providing information on the facts and requesting the granting of precautionary measures. This communication was registered by the Inter-American Commission under the number MC-380-09. The petitioners argued that the motivation behind the facts described was to persecute the judge for an autonomous ruling and that the facts constitute "a serious threat to her life, her physical integrity, her freedom, and her personal safety." Therefore, they asked the Commission for, among other things, the life and physical integrity of Judge Afiuni to be guaranteed and for her to be kept separate from those convicted, particularly those inmates who could have been imprisoned as a result of one of her judicial rulings;

e) On December 17, 2009, the Commission asked the State to submit information within 10 days on the relationship between the procedural situation of Ms. Afiuni and the reason for the arrest, the result of Ms. Afiuni's request to be transferred to the DISIP, and the measures taken to prevent her from being subjected to reprisals from other detainees in the INOF:

f) On December 28, 2009, the State informed the Commission of the following, among other things:

- That the proceeding with regard to the accusations against Judge Afiuni was in the investigative phase and that the arrest had been ordered by the 50th Lower Oversight Court of the Caracas Metropolitan Area Criminal Judicial Circuit;
- That on December 21, 2009, the Attorney General had carried out an *ex officio* visit to the INOF accompanied by a forensic doctor. The doctor did a series of examinations on the judge that verified her good physical condition, and
- That on December 21, 2009, the 13th Deputy Prosecutor confirmed that the judge was "imprisoned and protected in a safe area of the aforementioned penitentiary:"

g) On January 3, 2010, a group of inmates placed marking tape on their legs and heads as a sign of "war" or "riot" and planned to "burn the judge alive," in reference to Ms. Afiuni, along with three other detainees considered close to her. According to the petitioners, this group of individuals had intended to pour gasoline in the area where Ms. Afiuni was located and set it on fire. Judge Afiuni was transferred by the authorities to the area occupied by the officials in charge of guarding the prison in order to safeguard and preserve her life;

¹ According to the representatives of Ms. Afiuni, in Venezuela, justice system officials who are provisionally deprived of liberty are held in places other than penitentiaries in order to protect their lives and personal integrity from possible reprisals from other inmates in whose proceedings they may have participated.

h) On June 11, 2010, the Commission asked the State to adopt urgent measures to the benefit of María Lourdes Afiuni, requiring the State to:

- Take those measures necessary to guarantee her life and physical integrity.
- Take those measures necessary for her to be transferred to a safe place.
- Report on the actions taken toward judicially clearing up the facts justifying the adoption of precautionary measures:

i) On January 15, 2010, the State indicated that on December 21, 2009, the public prosecutor from the Office of the Attorney General verified that María Lourdes Afiuni was located in the security area known as the "Admission Area," which is used in "special cases," and that she was completely separated from the other holding areas "such that there is no risk of her being attacked by the other inmates." Likewise, it stated that the Directorate of Fundamental Rights of the Office of the Attorney General and the Senior Public Prosecutor of Miranda State had visited the INOF to verify the conditions under which Ms. Afiuni was being held, highlighting that she had stated "her decision to remain in the INOF and not be transferred to another location, expressing her appreciation to the guard staff for her permanent protection." According to information provided by the State, Judge Afiuni had been transferred to the INOF on December 19, 2009;

j) On January 26, 2010, the petitioners reported to the Commission that Judge Afiuni had been transferred to a maximum security cell; they highlighted that the location did not meet minimum sanitary conditions and that the judge's alleged statements were the result of a manipulation of her comments, as she had requested to be "transferred to her previous cell," given the conditions in her new place of detention. They highlighted that security conditions for the beneficiary were not adequate anywhere in the INOF, indicating that the authorities in that penitentiary have done "the little that was in their power." That communication was forwarded to the State on February 1, 2010, in order to receive comments, but the Venezuela did not respond;

k) On June 30, 2010, the petitioners pointed to a series of shortcomings in the conditions of detention, a lack of medical care,² and restrictions to visitations,³ among other allegations. They stated that the facility does not respect standards for classifying inmates according to how dangerous they are, nor are those on trial separated from those who have been sentenced. They added that "the hall where the judge is located is a kind of 'overflow' area of the prison, and that generally violent inmates [...] are sent to this area to alleviate tension in other parts of the prison." Additionally, they reported that toward the end of January 2010, there was an arson attempt after which the inmates were transferred to another area of the prison. However, the beneficiary and the inmates located in that hall had not been evacuated due to a "supposed oversight;"

² The petitioners indicated that after a series of medical examinations, Ms. Afiuni was prescribed a medicine containing penicillin, causing an allergic reaction. They also indicated that paramedics had recommended she be transferred to a medical facility. This transfer was denied by the facility's authorities. They highlighted a psychological report on Ms. Afiuni that had indicated that "she was suffering from the deterioration of her physical and mental health." However, no psychological treatment was provided.

³ The petitioners stated that on several occasions, the representatives had been prevented from seeing Ms. Afiuni on "general visitation or attorney visitation days." They added that in mid-May, Ms. Afiuni had been notified that her attorneys can only visit her for a maximum of 30 minutes.

l) The petitioners informed the Commission that there is a routine of taking Ms. Afiuni out for walks at night. They expressed that starting in May 2010 she has been taken out into the yard and from other cells the inmates had shouted "we are going to spill your blood in this prison," "fucking bitch, it's because of people like you that we are in here," and "night witch." According to a statement from Ms. Afiuni, at one point "they pointed a gun at her" from a guard station during her walk. They added that in May 2010, the director of the INOF had asked the prison inmates to sign a letter promising not to attack the judge. This had caused tension given that some inmates had refused to sign and others had asserted that this was privileged treatment. Finally, they stated that several women supposedly convicted by Judge Afiuni were located in the INOF;

m) In April 2010, the Director for the Protection of Fundamental Rights of the Office of the Attorney General submitted the results of the examinations done on Ms. Afiuni to the 50th criminal judge. The medical examination had concluded that Ms Afiuni's health was "satisfactory" and the psychiatric exam had determined that she suffered from "mixed anxiety-depressive disorder," for which reason it suggested psychotherapeutic support and the continuation of pharmacological treatment. In the psychiatric exam, Ms. Afiuni had presented with the following:

[that she is] under such psycho-terror... for four months in the cell... [there] in the prison there are two gangs... the government and the prison population... and [she] represent[s]... or better said [is] the government... and therefore responsible for them being imprisoned here [...] of course [...] not all of them [...] [she has] experienced horrible events or situations... like for example... an inmate who stood at the door of her cell [...] shouting [...] "I want to suck [...] judge cunt [...] finding an inmate in the room when she comes out of the bathroom... hearing in the early morning hours the inmate next door shouting for her to be beaten, for her to be stabbed [...] for her to be murdered [...] they shout damn you, damn you, die...once several inmates found some gasoline... that they were intending to throw into her cell... to burn her [...] they put notes under the door [...] saying that they're going to kill [her] [...] that they're going to rape [her] [...] that they're going to burn [her] [...]

n) The petitioners indicated to the Commission that in March 2010, Ms. Afiuni became aware of two lumps close to her breast. Following several requests that she not be examined at INOF facilities, on July 16, 2010, the Institute of Forensic Medicine (hereinafter "IMF" in its Spanish acronym) confirmed the masses found by Ms. Afiuni, as well as a series of scrapes on one leg. With regard to this, they allege that the latter finding had not been reported by the INOF when Ms. Afiuni entered that penitentiary;

o) A series of judicial requests were submitted requesting that Ms. Afiuni receive treatment in a civilian hospital. However, the domestic tribunal found that the Military Hospital was the proper place to carry out the medical examinations. She was examined on July 23, 2010, with a mammography carried out on her. The examination established "the presence of two masses." The Military Hospital took more than a month to submit the results to the tribunal and, as of the moment the petition for provisional measures was presented, had not provided treatment by a trusted doctor, as evidenced by other illnesses that have presented during her detention, including cystitis and allergies;

p) According to the petitioners, Ms. Afiuni is in a "maximum-security" cell lacking minimum sanitary conditions; she has been denied access to a cell that meets the minimum security and hygiene requirements (her cell measures 2m by 4m and has a

"miniscule" bathroom that does not work, with strong odors and windows with broken glass and bars); she was denied food and medicine for two days; she is not provided with basic nutritious food; and she does not have access to sunlight, among other things. They highlighted that Ms. Afiuni's situation is one of increasing isolation, as she does not have "access to the prison authorities" or the chance to interact with guard personnel or the rest of the prison population. With regard to access to visitation, they indicated that doctors, priests, and representatives of international organizations cannot enter her cell. They also stated that neither are all of the attorneys who she has informed the authorities form her legal defense team permitted to enter, and that the State has not given any explanation for this. They additionally reported that, in contrast to the other inmates of the INOF, a registry is kept of all the individuals who visit Ms. Afiuni;

q) In the last two months, Ms. Afiuni has been subjected to new restrictions in her status as an accused individual based on the regulations governing the Penitentiary System. According to these restrictions, any activity that she does must be approved by the Conduct Committee, "from cutting her hair to requesting a painkiller." They allege that almost none of her requests have received a response;

r) A number of international bodies have commented on Judge Afiuni's situation - including the Working Group on Arbitrary Detention, the European Parliament, the Special Rapporteur on the Independence of Judges, the Special Rapporteur on the Situation of Human Rights Defenders - and requested information from the State on her situation. That request has not been answered;

s) In their final communications with the Commission, dated November 5 and 23, 2010, the petitioners reiterated the aforementioned and added, *inter alia*, that:

- As context, "three INOF inmates have died in that penitentiary in recent months due to lack of prompt medical attention;"
- Access to attorneys has been limited in a discriminatory manner;
- "In September of 2010, a member of the World Organization against Torture, from Geneva, tried to visit the judge to learn about the status of her detention, but the visit was denied;"
- "Judge Afiuni's daughter has been subjected to humiliation at the hands of prison officials;"
- On November 8, 2010, Judge Afiuni file a complaint against the director of the INOF for abuses against those detained or sentenced and for failure to provide help;
- After November 14, 2010, when Ms. Afiuni gave statements to a national media outlet, there were new threats against her personal safety in the prison. Regarding this, her attorney has stated that certain inmates have said to the judge that "her private parts were to be searched every half an hour [...] and they shouted at her [...] that they would turn the entire prison population against her;"
- On November 22, 2010, when the judge was transferred to the Padre Machado Hospital, "under the national standards for oncological diagnosis and treatment, [she suffered] abuses and violations of the confidential doctor-patient relationship [by INOF guards and National Guard officials], upon their being present during the examinations and preventing the examinations from being completed;"
- The judge's attorneys are still waiting for access to the case file;

- The judge's attorneys submitted several requests for her to be treated by her trusted doctor. On July 7 and 8, 2010, the presiding judge responded that the military hospital is capable of making all oncological examinations and "prisoners must be evaluated by State institutions." On July 20, 2010, Judge Afiuni's attorney asked that she be transferred to a specialized medical center, a request that was rejected the following day. This request was repeated on August 31, October 8, and November 3, 2010, without response; and
 - On September 8, 2010, Ms. Afiuni submitted a complaint on "the absence of a ruling" with regard to her urgent request to be transferred to a medical center. On November 5, 2010, the petitioners pleaded before the judge that the Padre Pachado oncological Hospital "does not have the equipment to carry out the corresponding necessary treatment."
- t) On November 27, 2010, Judge Afiuni was, according to the petitioners, attacked with knives by two inmates, one of who said it was "Afiuni's fault" she was imprisoned. They told her that "she [did] not deserve to be imprisoned with them, but rather to be dead." According to the information received, there were no guards present, as on Saturdays "the prison turns into [...] no man's land." Likewise, the petitioners reported that "although the door to the entrance of the hall where judge Afiuni's cell is located is protected by several padlocks, on that day - inexplicably but coincidentally - the padlocks were open."
3. The Commission's arguments on which it based its request for provisional measures, which stated as follows:
- a) Despite having received several verbal and physical threats to her life and safety, and despite her defense attorneys having requested on several occasions that she be transferred - also as ordered by the Commission through precautionary measures - Judge Afiuni remains held in the INOF together with inmates she convicted in her capacity as a judge and with "violent" inmates who consider her a symbol of the institution that has restricted their liberty. In this sense, "the physical integrity and life of Ms. Afiuni are facing a situation" of extreme gravity and urgency and are at grave risk of suffering irreparable damage. As has been reported, on several occasions, other inmates have physically and verbally threatened to kill her and sexually assault her;
 - b) Ms. Afiuni is in an "overflow" area of the prison that contains inmates with different procedural statuses and varying degrees of dangerousness. Added to this, the State itself has tried to make the inmates sign a pact promising not to attack Judge Afiuni - a pact that was rejected - demonstrating the situation of gravity and urgency that she faces. Furthermore, her situation of lack of safety has gotten worse following statement made during a mandatory nationwide government broadcast, for which reason she is currently under threat of having her private parts "searched," as well as of having the entire INOF prison population turned against her;
 - c) The poor detention and health conditions Ms. Afiuni faces. Added to that, the inmates who interact with Judge Afiuni are being threatened. Furthermore, visitations to Ms. Afiuni are limited and controlled by State agents, preventing her own attorneys from having continuous access, all without any justification;
 - d) Despite several requests made by her defense team to allow her to be visited by a civilian doctor, the judges have ordered her to be transferred to forensic and military facilities. During the medical visits, "penitentiary personnel have remained in the

room where Ms. Afiuni was being examined, even though the exams were gynecological in nature." It would seem that Ms. Afiuni was finally taken care of in a specialized civilian hospital. Nevertheless, "the medical examination could not be completed due to the presence of officials from the penitentiary and the National Guard."

- e) Its concern over the lack of compliance by State authorities with the precautionary measures that were ordered. The State did not respond to the requests for information made by the Commission. Specifically, the explicit order for precautionary measures transferring Ms. Afiuni to a safer place was not heeded. Her situation has worsened due to the public statements made during the mandatory national government broadcast, to the point where she has even received death threats. Neither has the State responded to various international organizations with regard to the situation.

4. The Inter-American Commission's request, based on Article 63(2) of the American Convention and Article 27 of the Rules of Procedure, that the Court require the State to adopt the following measures:

- a) Take the measures necessary to guarantee the life and physical safety of Judge María de Lourdes Afiuni;
- b) Take the measures necessary for her to be transferred to a safe place;
- c) Take the measures necessary to provide adequate medical attention to the beneficiary in specialized civilian facilities;
- d) Launch an investigation into the facts motivating the request for provisional measures as a mechanism for preventing any situation that puts the life and personal safety of María Lourdes Afiuni at risk.

5. The notes of the Secretariat dated December 1, 2010, which, based on Article 27(5) of the Rules of Procedure of the Tribunal and following the instructions of the President of the Court, asked the State to submit whatever comments and documentation it considered pertinent with regard to the request for provisional measures made by the Commission. The State was given until Wednesday, December 8, 2010, to do so. In that communication, the President reminded the Illustrious State that, under Article 1(1) of the American Convention, the general obligations of States Parties to respect the rights and liberties enshrined in the Convention and to guarantee the free and full exercise for all individuals subject to their jurisdiction are in effect at all times. In particular, the President recalled that the State is in a special position to guarantee rights with regard to individuals deprived of liberty due to the fact that penitentiary authorities exercise total control over those individuals. For this reason, the State is especially obliged to guarantee their rights.

6. The brief dated December 8, 2010, through which the State answered the President's request for comments (*supra* Having Seen 5). The State made broad reference to a criminal proceeding opened against the individual to whose favor the precautionary measure of preventative prison was revoked through a ruling of the tribunal of which Ms. Afiuni formed a part. Additionally, as concerns this request, the State expressed the following:

- a) Various of Ms. Afiuni's actions in her capacity as a judge were considered by the Office of the Attorney General as conduct punishable under the Law against Corruption for having constituted "an arbitrary action contrary to her duty as a public servant [that] allowed and facilitated profits to the benefit of another individual." On January 26, 2010, two public prosecutors of the Office of the

Attorney General brought charges against Ms. Afiuni before the 50th Lower Oversight Court of the Caracas Metropolitan Area Judicial Criminal Circuit for the alleged commission of crimes "of corruption, abuse of authority, and facilitation of the escape of the prisoner provided for in articles 62 and 67 of the Law against Corruption and 264 of the Criminal Code." After holding the preliminary hearing, on May 17, 2010, the judge admitted the accusation in its entirety and ordered that an oral and public trial be opened in September 2010, although it has been postponed due to actions brought by the accused;

- b) Regarding the precautionary measures ordered by the Commission, the State indicated that it has provided a response to the Inter-American Commission when asked for information. In this regard, the Office of the Attorney General has taken several measures toward safeguarding Ms. Afiuni's right to life, health, and physical safety. Thus, on April 8, 2010, a public prosecutor from the Office of the Attorney General, attorney Enrique Arrieta, went to the INOF accompanied by a forensic doctor to carry out a legal medical exam (*supra* Having Seen 2(m)). The exam concluded that the patient's general health was satisfactory. The prosecutor tasked with the visit confirmed that the inmate in question is located in an area called the "admission" area. The cell has good ventilation, sufficient natural and artificial light, a bathroom including a toilet, shower, and sink, and a television and DVD player, and that, since the day she was first imprisoned, she has regularly received visits from relatives, friends, and defense attorneys;
- c) Regarding the supposed fire that took place on February 23, 2010, the State clarified that it was "an arson attempt" that was brought under control by the authorities. Regarding the other supposed fire that allegedly took place three days later, the State indicated that according to the authorities "this was only a rumor;"
- d) Ms. Afiuni has received medical, psychological, and psychiatric evaluations from both doctors registered with the Ministry of the People's Power for Domestic Relations and Justice and forensic doctors with the Scientific, Criminal, and Forensic Investigative Corps, as well as from specialists of the Dr. Carlos Arvelo Military Hospital. The results of the examination on March 12 indicate that she presents with "a syndrome of anxiety and depression" that does not affect her competence to stand trial. However, the specialists recommended psychotherapeutic support, support that has been provided to her together with the above-indicated pharmacological treatment. Since her entry into the penitentiary, the institutions of the State have provided the full range of assistance and medical care required by domestic law and international treaties;
- e) Regarding the allegation on the supposed prohibition or limitation of access to her defense team, relatives, and friends in the INOF, the State indicated that Ms. Afiuni has received more ordinary and special visitations in comparison with the other inmates, and that the prosecutor in charge has attended to each of the requests submitted by her. Neither is it true that she has not been able to exercise her freedom of religion and recreation as "she has received visitations from a number of church authorities." Therefore, "her wish to remain in a maximum-security area constitutes the only impediment faced by the inmate to her movement about other areas of the [penitentiary]." Toward safeguarding her rights, since the day of her internment the Office of the Attorney General has coordinated "regular visits," those being the acts of inspection carried out by the aforementioned prosecutor;

- f) The State reported on the actions carried out by the People's Ombudsman on this matter in December 2009 and January 2010, as well as the actions taken by that body toward obtaining a change in her cell. In addition, the National Directorship for Penitentiary Services (DNSP in its Spanish acronym) reported in January 2010 on Ms. Afiuni's first petition for a change of cell. It approved her relocation to a maximum-security cell and agreed to transfer inmates with poor behavior reports or who had insulted Ms. Afiuni out of INOF to other prisons; and
- g) The State assured that it is taking specific measures to safeguard Ms. Afiuni's right to life, health, and physical integrity, for which reason it asked the Court to rule "the provisional measures requested to be inadmissible" because she is not in a situation of extreme gravity or urgency, nor facing any situation that could cause irreparable damage.

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention since August 9, 1977, and, in keeping with Article 62 of the Convention, recognized the contentious jurisdiction of the Court on June 24, 1981.

2. Article 63(2) of the American Convention holds that, "In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission."

3. In the terms of Article 27 of the Rules of Procedure of the Court:⁴

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

5. The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested.

6. If the Court is not sitting, the Presidency, in consultation with the Permanent Commission and, if possible, with the other Judges, shall call upon the State concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court during its next period of sessions.

4. The provisions established in Article 63(2) of the Convention make the provisional measures ordered by this Tribunal obligatory, as the basic principle of State responsibility,

⁴ Rules of Procedure passed in the LXXXV Regular Period of Sessions held from November 16 to 28, 2009.

based on international case law, has indicated that States must comply with their obligations under the Convention in good faith (*pacta sunt servanda*).⁵

5. This request for provisional measures is not related to a case before the Court. Rather, it originated in a request for precautionary measures presented before the Inter-American Commission. This President does not have information on whether the facts brought to the attention of the Tribunal form part of an adversarial proceeding before the Inter-American system or if a petition on the merits related with this request has been brought before the Inter-American Commission.

6. In International Human Rights Law, provisional measures are not solely precautionary, in the sense that they preserve the legal situation. Rather they are fundamentally tutelary, in that they protect human rights by seeking to prevent irreparable damage to persons. An order to take measures is applicable as long as it meets the basic requirements of extreme gravity and urgency and prevention of irreparable damage to persons. In this way, provisional measures become a true jurisdictional guarantee of a preventative nature.⁶

7. The Court has previously found it necessary to clarify that, given the tutelary nature of provisional measures, in exceptional cases and even when there is no specific adversarial case before the Inter-American system, it is possible for the Court to order them in situations in which, *prima facie*, the grave and urgent infraction of human rights could take place. To do so, the Court must weigh the problem in question, the effectiveness of State actions given the situation described, and the degree of lack of protection faced by individuals for whom the measures are requested in the event that the measures are not adopted. To do so, it is necessary for the Inter-American Commission to have presented sufficient grounds that meet the aforementioned standards and for the State to have failed to clearly and sufficiently demonstrate the effectiveness of the specific measures that it has adopted domestically.⁷

8. It should be recalled that given a request for provisional measures, the Court can only consider those arguments that are directly related to extreme gravity, urgency and the need to avoid irreparable damages to persons. Any additional fact or argument not related with the purpose of this provisional measures proceeding shall not be considered for, where

⁵ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, Considering six; *Matter of the Jiguamiandó and Curbaradó Communities*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, Considering 4, and *Matter of Centro Penitenciario de Aragua "Cárcel de Tocarón."* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2010, Considering 4.

⁶ Cf. *Case of the Newspaper "La Nación."* Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering 4; *Case of De La Cruz Flores*. Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering 74, and *Matter of Centro Penitenciario de Aragua "Cárcel de Tocarón."* Provisional Measures regarding Venezuela. Order of the Court of November 24, 2010, Considering 6.

⁷ Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*. Request for Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights dated February 8, 2008, Considering 9; *Matter of Guerrero Larez*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering 8, and *Matter of Centro Penitenciario de Aragua "Cárcel de Tocarón."* Provisional Measures regarding Venezuela. Order of the Court of November 24, 2010, Considering 7.

appropriate, it can only be examined and resolved during the deliberations on the merits in the adversarial case.⁸

9. This President observes that from the information provided by the Commission (*supra* Having Seen 2), it can be deduced that Ms. María Lourdes Afiuni has been under detention since December 10, 2009, and that even though the Commission ordered precautionary measures for her protection on January 11, 2010, the verbal threats against her continue, allegedly from other inmates and public officials. Physical attacks have also been alleged, putting at risk her life and personal integrity. Therefore, the information received would indicate that the precautionary measures have not been sufficient, for which reason it is necessary to step up the security measures taken by the State. In this sense, it is necessary to highlight that Ms. Afiuni has been detained in connection with her actions in the exercise of her position as a criminal judge and that she has been taken to a penitentiary (the INOF) in which it is alleged that other inmates are located who were previously processed by her.

10. To this circumstance is added the alleged deterioration in her health and the alleged lack of adequate medical care, particularly given the discovery of two lumps in her breast, whose diagnosis is still not clear. The Commission also alleges that visitations to Ms. Afiuni are limited and controlled; that the judges have only allowed her to be moved to forensic and military installations to receive care; and that, during the medical visits, penitentiary personnel have remained in the room where Ms. Afiuni was being examined, even though the exams were gynecological in nature. The allegation that at various times Ms. Afiuni was threatened with murder or sexual abuse is particularly worrying. The State has not reported in detail on the specific measures it is presently taking to guarantee adequate conditions of detention and to allow her to receive the medical care of her choice.

11. This Court has found that the State is in a special position to guarantee rights with regard to individuals deprived of liberty due to the fact that penitentiary authorities exercise total control over those individuals. Likewise, the Court has indicated that independent of the existence of specific provisional measures, the State is especially obliged to guarantee the rights of individuals deprived of liberty.⁹ More specifically, the Court has established in its settled case law that States have the duty to provide detainees with regular medical checkups and care, as well as adequate treatment when required.¹⁰ Likewise, the State must allow and facilitate detainee care by a medical team selected by the detainees themselves or by those exercising their representation or legal custody,¹¹ according to the specific needs of a particular situation.

⁸ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of August 29, 1998, Considering six; *Matter of the Jiguamiandó and Curbaradó Communities*. Provisional Measures regarding Colombia. Order of the Court of August 30, 2010, Considering 6, and *Matter of Gladys Lanza Ochoa*. Request for Provisional Measures regarding Honduras. Order of the Court of September 2, 2010, Considering 7.

⁹ Cf. *Matter of Capital El Rodeo I & El Rodeo II Judicial Confinement Center*, *supra* footnote 4, Considering 11; *Matter of Natera Balboa*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of December 1, 2009, Considering 14, and *Matter of Guerrero Larez*, *supra* footnote 7, Considering 13.

¹⁰ Cf. *Case of Cesti Hurtado*. Provisional Measures regarding Peru. Order of the President of the Inter-American Court of Human Rights of January 21, 1998, Considering 6, and *Case of Montero Arangueren et al. (Catia Prison) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 102.

¹¹ Cf. *Case of Cesti Hurtado*. Provisional Measures regarding Peru, *supra* footnote 10, Considering 6, *Case of García Asto and Ramírez Rojas v. Peru*, *supra* footnote 144, para. 227; *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, para. 122, and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 157, and *Case of Montero Arangueren et al. (Catia Prison) v. Venezuela*, *supra* footnote 10, para. 102.

12. The aforementioned background and allegations allow for the observation that Ms. María Lourdes Afiuni is *prima facie* facing a situation of extreme gravity and urgency, given that her personal integrity and life are threatened and at grave risk. The *prima facie* evaluation standard in a given matter and the use of assumptions given the need for protection have moved the Court to order measures on several occasions.¹² The irreparable character of the damage that could be caused to the rights to personal integrity and life that are in danger in this situation of grave and urgent risk is evident. In particular, given the position she held as a criminal judge, the adoption of measures necessary to overcome any situation of risk to her life and physical, psychiatric and moral safety is urgent. Those measures should be taken in such a way as to fully guarantee her safety inside the penitentiary where she is located or to allow her to be transferred so as to not be subjected to threats or attacks by other inmates, officials, or any individual who could affect her rights. In the spirit of these urgent protective measures, State authorities must consider the possibility of placing Ms. Afiuni in a detention center or place where her life and personal safety are protected in the best way possible. Additionally, without prejudice to the care that can be provided by doctors who form part of State institutions, in the event of needing specialized medical attention, the State must make the necessary provisions for Ms. Afiuni to be attended to by doctors of her choosing.¹³ The State must ensure that in the place she is held, Ms. Afiuni is not affected with regard to her right to gain access to relatives and visitors, her attorneys, and the doctors who come examine her.

13. Given that this request for provisional measures has been presented by the Inter-American commission while the Tribunal is not sitting, in accordance with the provisions of Article 27(6) of the rules of procedure it can, under the circumstances, call upon the State concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court during its next period of sessions.

14. The adoption of urgent precautions or provisional measures does not imply an eventual ruling on the merits of the matter should the case come before the Court, nor does it prejudice State responsibility for the facts denounced.¹⁴

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

Similarly, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in resolution 43/173, dated December 9, 1988, principal 24.

¹² Cf. *inter alia*, *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures regarding Venezuela. Order of the President of the Inter-American Court of Human Rights of January 13, 2006, Considering 16; *Matter of Guerrero Larez*, *supra* footnote 6, Considering 14, and *Matter of Natera Balboa*, *supra* footnote 7, Considering 15.

¹³ In a similar sense, Cf. *Case of Cesti Hurtado*. Provisional Measures regarding Peru, *supra* footnote 10, Considering 6 and Operative Paragraph 2.

¹⁴ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the President of the Inter-American Court of Human Rights of June 13, 1998, Considering 6; *Case of Rosendo Cantú et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 2, 2010, Considering 16 and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, Considering 16.

by way of the authority conferred by Article 63(2) of the American Convention on Human Rights and articles 27 and 31(2) of the Rules of Procedure of the Tribunal,

DECIDES TO:

1. Require the State to adopt, immediately, the measures necessary to guarantee the life and physical, psychiatric, and moral integrity of Ms. María Lourdes Afiuni.
2. Require the State to adopt the measures necessary for Ms. Afiuni to be located in a place of detention that is adequate to her specific circumstances in light of the position she held as a criminal judge, particularly through granting full guarantees of security while not affecting her right to gain access to relatives and visitors, her attorneys, and the doctors who come examine her, under the terms of Considering clause 12.
3. In the event that Ms. Afiuni needs specialized medical attention and without prejudice to the care that can be provided by doctors who form part of State institutions, require the State to make the necessary provisions for Ms. Afiuni to be attended to by doctors of her choosing.
4. Require the State to report to the Inter-American Court no later than December 20, 2010, with regard to the order found in the first operative paragraph of this Order.
5. Require the representatives of the beneficiary and the Inter-American Commission to present, within one week, any comments that they deem pertinent on the report mentioned in the second operative paragraph of this resolution.
6. Require, likewise, that the State inform the Inter-American Court of Human Rights every two months, beginning on December 20, 2010, of the provisional measures adopted in conformity with this decision.
7. Request that the representatives of the beneficiary and the Inter-American Commission on Human Rights present their comments within four and six weeks, respectively, counting from notification of the State reports indicated in the fourth operative paragraph.
8. To request that the Secretariat of the Court notify the State, the Inter-American Commission on Human Rights and the beneficiary's representatives of this Order.

Diego García-Sayán
President

Pablo Saavedra-Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra-Alessandri
Secretary