

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MARCH 2, 2011**

**PROVISIONAL MEASURES
REGARDING VENEZUELA**

MATTER OF MARÍA LOURDES AFIUNI

HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of November 30, 2010, and appendixes, whereby it submitted a request for provisional measures to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal"), pursuant to 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"), for the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") to protect the life and personal integrity of Ms. María Lourdes Afiuni (hereinafter "Judge Afiuni", "Ms. Afiuni" or "the beneficiary"). During the Commission's 140th period of sessions, the representatives asked that the situation be elevated to the jurisdiction of the Inter-American Court, pointing to Ms. Afiuni's situation of potential risk. Thus, in a communication dated October 24, 2010, the petitioners submitted information on the health of Judge Afiuni and the alleged deficient detention conditions and reiterated the information on risk due to threats from other inmates whom the judge presumably convicted during the exercise of her functions.

2. The background presented by the Commission related with the request for provisional measures, namely:

a) In December 2009 Ms. Afiuni was, in her position as Judge, in charge, of the 31st Court of First Instance of Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas. On December 11, 2009, Judge Afiuni was charged with the crimes of corruption, abuse of authority, complicity in a prison escape and conspiracy to commit crime based on the fact that as the judge of that court, she

had on the previous day ordered the provisional release of an individual who had been in pretrial detention for over two and a half years. On that same day, the President of Venezuela publicly referred to Judge Afiuni as a “bandit” and requested her arrest and conviction;

b) On December 12, 2009, charges were filed against the Judge, and her arrest and pretrial detention were ordered. She was to be held at the National Women’s Correctional Institute (hereinafter “INOF,” according to its Spanish acronym), a prison where other persons that had been convicted by Judge Afiuni were held;

c) Ms. Afiuni’s defense council asked the competent authorities to change the location of her custody to the offices of the Directorate of Intelligence and Prevention Services (hereinafter “DISIP,” according to its Spanish acronym) so that she would be provided with guarantees on her life and personal integrity.¹ The judge in charge of the proceedings against her did not heed to this request, but ratified the INOF as the place of detention;

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”) reporting the facts and asking that precautionary measures be granted. This communication was filed by the Inter-American Commission under number MC-380-09. The petitioners asserted that the purpose of the above-described facts was to persecute the Judge in retaliation for her independent ruling and that the facts constituted a “serious threat to her life, physical integrity, liberty and personal safety.” Consequently, among other requests, they asked the Commission to guarantee the life and physical integrity of Ms. Afiuni and that she be kept separate from the convicts, especially from those imprisoned as a result of one of her court rulings;

e) On December 17, 2009, the Commission asked the State to submit information within 10 days on the procedural situation of Judge Afiuni and the reasons for her arrest, the result of the request for her transfer to DISIP, and the measures taken to prevent her from being subject to retaliation at the hands of other inmates held at the INOF;

f) On December 28, 2009 the State reported to the Commission, among other things:

- That the proceedings brought against Judge Afiuni were in the investigative phase, and that the arrest had been ordered by the 50th Court of First Instance of Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas;
- That on December 21, 2009, the Attorney General’s Office made an *ex officio* visit to the INOF along with a medical examiner who performed a series of exams on Ms. Afiuni that verified her good health condition, and

¹ According to Ms. Afiuni’s representatives, officers of the justice system in Venezuela who are arrested are held in places other than prisons in order to protect their lives and personal integrity from possible retaliation from other inmates in whose trials they took part.

- On December 21, 2009 Assistant Attorney General 13 verified that Judge Afiuni was being “held and protected in a security area of that penitentiary.”

g) On March 3, 2010, a group of inmates placed marking tape on their legs and heads as a sign of “war” or “riot,” planning to “burn the judge alive” - referring to Ms. Afiuni – along with three other detained persons considered to be close to her. According to the petitioners, this group of persons tried to pour gasoline in the area where Ms. Afiuni is held and set it on fire. Judge Afiuni was transferred by the authorities to the prison guards’ area in order to protect and preserve her life;

h) On January 11, 2010, the Commission asked the State to adopt precautionary measures to the benefit of Ms. Afiuni. It demanded that the State:

- Adopt the measures necessary to guarantee her life and physical integrity.
- Adopt the measures necessary to transfer her to a safe place.
- Report on the actions taken to judicially resolve the facts that led to the adoption of precautionary measures.

i) On January 15, 2010 the State indicated that on December 21, 2009 a government attorney from the Office of the Attorney General confirmed that Judge Afiuni was being held in a security area called the “Admission Area.” The area was used in “special cases” and was completely separate from other confinement areas “such that there is no risk of her being attacked by other inmates.” In addition, it indicated that the Director of Human Rights Protection of the Attorney General’s Office and the Attorney General of the State of Miranda went to the INOF to verify the conditions in which Ms. Afiuni was kept, noting that she expressed “her decision to stay at INOF and not be transferred to another facility, and that she thanks the guard staff for their constant protection.” According to the information provided by the State, Judge Afiuni was transferred to the INOF on December 19, 2009;

j) On January 26, 2010, the petitioners informed the Commission that Ms. Afiuni had been transferred to a maximum security cell. They highlighted that it did not meet minimum sanitary conditions, and that Judge Afiuni’s supposed comments were the result of a manipulation of her statements, as she had requested “to be transferred to her old cell” because of the conditions of the new one. They emphasized that no part of the INOF is secure enough for the beneficiary, indicating that the prison authorities have done “what little they could.” This communication was forwarded to the State on February 1, 2010, for its comments. However, Venezuela did not respond;

k) The petitioners indicated to the Commission that in March of 2010, Ms. Afiuni identified two lumps near her breast. After several requests to have her examined outside the INOF, on July 16, 2010, the Forensic Medicine Institute (hereinafter the “IMF” according to its Spanish acronym) checked the lumps found by Judge Afiuni and a series of scrapes on one of her legs. They claimed that the latter injury had not been reported by the INOF when Ms. Afiuni entered the prison;

l) In April of 2010, the Director of Basic Rights Protection of the Attorney General’s Office forwarded the results of the exams performed on Ms. Afiuni to the

50th criminal court judge. The medical examination concluded that Judge Afiuni's condition was "satisfactory" and the psychiatric exam had determined that she suffered from a "mixed anxiety and depression disorder." The report therefore suggested psycho-therapeutic support and continuation of pharmaceutical treatment. In her psychiatric exam Ms. Afiuni expressed the following:

[that she has lived] with so much mental terror ... for four months in that cell...[there] in the prison there are two camps... the government and the prison population... and [she] represent[s] ... or rather [she is] identified with the government...[therefore she is] to blame for them being locked up [t]here [...] of course [...] not all of them [...] [she] ha[s] experienced terrifying events or situations... for example ... one inmate who stood at the door of this cell [...] screaming [...] "I want to suck[...] judge's cunt[...] finding an inmate in the room when [she] came out of the bathroom... hearing early in the morning [...] the inmate in the next cell screaming that they paid her to stab [her] to death [...] to murder [her] [...] [T]hey scream at [her] damn you[...] die, bitch... one time some of the inmates got gasoline ... and were planning to pour it into this cell ... to burn [her] alive... [T]hey slip papers under the cell door ... saying [...] that they're going to kill [her]... they're going to rape [her]... they're going to burn [her] alive.

m) The petitioners reported to the Commission that there is a practice of taking Ms. Afiuni out for a walk during the evening. They expressed that at the beginning of May of 2010, she had been taken to the yard, while from the other cells the inmates shouted at her, "we're going to spill your blood in this prison," "damn you bitch, it's because of people like you that we're here," "nocturnal witch." According to Ms. Afiuni's statement, one time "they pointed at her with a gun" from the security post during the walk. They added that in May of 2010, the Director of INOF asked the inmates to sign a letter in which they committed to not attack the judge, something that had caused tension because some of the inmates refused to sign it and others claimed that it was privileged treatment. Finally, they indicated that several women allegedly convicted by Judge Afiuni were held at INOF;

n) On June 30, 2010, the petitioners indicated a series of shortcomings in the detention conditions, a lack of medical attention,² and restrictions on visits,³ among other claims. They stated that the facility does not respect the criteria for classifying inmates according to the degree of danger they pose, and those held in pretrial detention are not separated from those already convicted. They also indicated that "the hall where [Judge Afiuni] is held is a type of 'relief' area of the prison, and inmates that are generally violent [...] are sent to this area to ease tensions elsewhere in the prison." Moreover, they reported that toward the end of 2010 there was an attempted arson, after which the inmates had been transferred to another area of the prison. However the beneficiary and the inmates that were in that hall were not evacuated, as they were "supposedly forgotten;"

o) A number of requests had been filed with the courts for Ms. Afiuni to be allowed receive treatment in a civilian hospital. However, the domestic court has indicated

² The petitioners indicated that after a series of medical examinations, Ms. Afiuni was prescribed a medication that contained penicillin, which caused an allergic reaction. They also indicated that paramedics had recommended transferring her to a medical center, a recommendation that prison authorities rejected. They emphasized that a psychological report on Judge Afiuni indicated that "she was suffering deterioration in her physical and mental health," but she was not given psychological treatment.

³ The petitioners stated that on several occasions, Ms. Afiuni's representatives were denied access to her "during general or attorney visitation days." They added that in mid-May, the beneficiary was notified that her attorneys could only visit her for a maximum of 30 minutes.

that the military hospital was the appropriate one for performing medical exams. On July 23, 2010, she was examined, and a mammography determined "the presence of two lumps." The military hospital took over a month to forward the result to the court, and as of the time of the filing of the request for provisional measures, she had not received treatment from a doctor. This was also the case other times she got sick, for example with cystitis and allergies;

p) According to the petitioners, Ms. Afiuni is being held in a "maximum security" cell that lacks the minimum sanitary conditions; she has been denied access to a cell that complies with the minimum safety and hygiene requirements (her cell measures two by four meters, has a "tiny" bathroom facility that does not work, with strong odors and windows with broken glass and bars); she was denied food and medication for two days; is not provided with the basic food for her nutrition; and she does not have access to sunlight, among other issues. They emphasized that Judge Afiuni is increasingly isolated, as she has no "access to the prison authorities" and has no way to interact with guards or the rest of the inmate population. Regarding visits, they indicated that doctors, priests and international organizations are not allowed access to her cell. They also expressed that not even the attorneys who she has reported to the authorities as part of her defense counsel are allowed to enter, and the State has not given any explanations in this regard. In addition, they reported that unlike with other inmates at the INOF, a record is kept of all persons that visit Ms. Afiuni;

q) During the last two months and based on prison system regulations, Judge Afiuni was subjected to a new restriction in her status as a person awaiting trial. Based on this status, any activity that she performs must be approved by the Junta de Conducta (Board of Conduct), "from cutting her hair to requesting a painkiller." They added that almost all of her requests remain unanswered;

r) A number of international organizations, namely the Working Group on Arbitrary Detention, the European Parliament, the Special Rapporteur on the Independence of Judges and the Special Rapporteur on the Situation of Human Rights Defenders have issued statements regarding Judge Afiuni's situation, and have requested information on her situation from the State. The requests have not been answered;

s) In their latest communications to the Commission dated November 5 and 23, 2010, the petitioners reiterated what they had previously expressed, and added, *inter alia*, that:

- As context, "in recent months, three inmates at the INOF have died there due to lack of timely medical attention;"
- Access to her attorneys has been limited in a discriminatory manner;
- The Judge's attorney filed several requests for her to receive treatment from her trusted doctor. On July 7 and 8, 2010, the judge in charge responded that the Military Hospital had the capacity to perform oncological exams and that "prisoners must be examined by State institutions." On July 20, 2010, Judge Afiuni's attorney requested her transfer to a specialized medical center. The request was turned down the following day. It was repeated on August 31, October 8 and November 3, 2010, with no response;
- On September 8, 2010 Ms. Afiuni filed a complaint for "lack of a decision" regarding her urgent request to be transferred to a medical center. On November

5, 2010, the petitioners had argued before a judge that the Padre Machado Cancer Hospital “does not have the supplies necessary to perform the corresponding necessary treatment”;

- “In September of 2010, a member of the World Organisation against Torture (Geneva) tried to visit Ms. Afiuni to assess her detention condition, but was turned away;”
- “Ms. Afiuni’s daughter has been subjected to humiliation at the hands of prison employees;”
- On November 8, 2010, Judge Afiuni filed a complaint against the INOF director for abuse of detained or convicted persons and for failing to provide help;
- After November 14, 2010, when Ms. Afiuni gave statements to the national media, she received new threats against her personal integrity in the prison. In this regard, her attorney stated that some of the inmates said that “they were going to check her all the way to her private parts every half an hour [...] and screamed [...] that they were going to put the entire prison population against her”;
- On November 22, 2010, when the Judge was transferred to Padre Machado Hospital, “nationally known for diagnosis and treatment of cancer, [she suffered] violations to the confidential doctor-patient relationship [at the hands of the INOF guards and employees of the National Guard], as they were present during the examinations and hindered their completion”;
- The Judge’s attorneys are still waiting for access to the file.

t) According to the petitioners, on November 27, 2010, the beneficiary was attacked with edged weapons by two inmates, one of whom was imprisoned “due to Afiuni’s fault.” They told her that “she did not deserve to be imprisoned with them, but to be dead.” According to the information received, there were no guards present, as a result of which on Saturdays, “the prison becomes [...] No Man’s Land.” In addition, the petitioners reported that “although the entrance door to the hall where Judge Afiuni’s cell is located is protect[ed] by security locks, on that day, inexplicably but coincidentally, those security locks were open.”

3. The Commission’s arguments to support the request for provisional measures, in which it indicated:

- a) That although she had been subject to verbal and physical threats against her life and integrity, and even though her defense counsel had requested her transfer on several occasions –and the Commission had ordered it in the precautionary measures- Judge Afiuni continued to be held at the INOF both with inmates who had been convicted by her in her position as judge and with “violent” inmates who considered her a symbol of the institutions that had restricted their liberty. In this regard, “the physical integrity and life of Ms. Afiuni are in a situation” of extreme gravity and urgency and at grave risk of suffering irreparable damage. As reported, on several occasions the other inmates have physically and verbally threatened to kill and rape her;
- b) Ms. Afiuni was in a “relief” area within the jail, in which there were inmates in different procedural situations and that pose different degrees of danger. Moreover, the situation of insecurity worsened after the statement given during a mandatory

national broadcast and the “pact of no aggression” against her promoted at the INOF;

- c) The poor detention and health conditions of Ms. Afiuni. In addition, the inmates that interact with her are also being threatened. Moreover, her visits are limited and controlled by State agents, and even her attorneys are being denied continued access, with no justification;
- d) Its concern with the State authorities’ lack of compliance with the precautionary measures ordered. The State did not respond to the Commission’s requests for information. Specifically, the explicit order in the precautionary measures for Ms. Afiuni to be transferred to a safer place was disregarded. Her situation worsened after the public statements made on national TV, and she even received death threats. The State has also failed to reply to different international bodies regarding this 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, for the Court to require the State to:

- a) Adopt all measures necessary to guarantee the life and physical integrity of Judge María de Lourdes Afiuni;
- b) Adopt all measures necessary to transfer her to a safe place;
- c) Adopt all measures necessary to provide adequate medical attention to the beneficiary in specialized civilian facilities;
- d) Investigate the facts that support the request for provisional measures as a mechanism to prevent any situation of risk to the life and personal integrity of María Lourdes Afiuni.

5. The Secretariat’s note of December 1, 2010, whereby, based on Article 27(5) of the Rules of Procedure of the Court and following the instructions of the President of the Court, the State was requested to submit the observations and documentation deemed pertinent with regard to the request for provisional measures made by the Commission by Wednesday, December 8, 2010, at the latest. In this communication, the President reminded the State that under Article 1(1) of the American Convention, States Parties have the general obligation to respect the rights and freedoms recognized therein and to ensure the full and free exercise of these rights to all persons under its jurisdiction, under all circumstances. Specifically, the President reminded the State that it is in a special position as protector of persons deprived of their liberty, given that prison authorities exercise total control over them. Hence it is especially obligated to guarantee their rights.

6. The brief of December 8, 2010, whereby the State answered the President’s request for comments (*supra* Having Seen 5). The State referred broadly to a criminal proceeding opened against the person to whose benefit the precautionary measure of preventive detention was revoked by a ruling of the court of which Ms. Afiuni was a part. In addition, with regard to this request, the State indicated that:

- a) Several of Judge Afiuni’s actions in her capacity as judge were considered by the Attorney General’s Office as punishable behavior under the Anti-Corruption Act, her having performed “an arbitrary act in violation of her duty as a public employee

[that] allowed and facilitated a benefit for another party.” On January 26, 2010, two public prosecutors with the Attorney General’s Office brought charges before the 50th Court of First Instance of Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas against Ms. Afiuni for the alleged crimes of “corruption, abuse of authority and complicity in a prison escape, as established in Articles 62 and 67 of the Anti-Corruption Act and 264 of the Criminal Code.” Following the preliminary hearing, on May 17, 2010, the court fully admitted the accusation and ordered oral and public proceedings to begin in September of 2010, although that has been delayed due to the actions of the accused;

- b) With regard to the precautionary measures ordered by the Commission, the State indicated that it has answered the Inter-American Commission’s requests for information. In this regard, the Attorney General’s Office has carried out several measures to protect Ms. Afiuni’s right to life, health and physical integrity. On April 8, 2010, Enrique Arrieta, an attorney with the Attorney General’s Office, went to the INOF with a medical examiner to perform a legal medical examination (*supra* Having Seen 2.m), which concluded that the general health of the patient was satisfactory. The attorney responsible verified that the inmate under consideration was in an “admission” area, in a well-ventilated cell, with sufficient natural and artificial lighting, a bathroom with a toilet, shower, and sink, a TV and DVD, and that since the date of her detention she has regularly received visits from her relatives, friends, and defense counsel;
- c) Regarding the alleged fire on February 23, 2010, the State clarified that it was “an attempted arson” that was controlled by the authorities. Regarding another fire alleged to have taken place three days later, the State indicated that according to the authorities, “it was only a rumor;”
- d) Ms. Afiuni has received medical, psychological and psychiatric evaluations both from doctors with the Ministry of the People’s Power for Domestic Relations and Justice and from medical examiners of the Scientific, Criminal and Criminology Investigations Corps and military hospital specialist “Dr. Carlos Arvelo.” The results of the March 12 examination indicate that she has “an anxiety and depression syndrome” that does not affect her fitness for trial. However, specialists recommended psychological therapy, which she has received along with the pharmaceutical treatment indicated. Since she entered the prison, State institutions have provided the comprehensive care and medical attention required by domestic laws and international treaties;
- e) Regarding the claim that access to defense counsel, next of kin and friends in the INOF has been prohibited or limited, the State indicated that Ms. Afiuni has received more ordinary and extraordinary visits than the other inmates, and the government attorney in charge has addressed each of the requests she has submitted. Neither is it true that she has not been able to exercise freedom of religion and recreation, as “she has received visits from several church authorities.” It emphasized that “the only prohibition or limitation on the inmate’s moving to other areas of the [penitentiary] is due to her expressed wishes to remain in a maximum security area.” In order to protect her rights, since the day of her confinement, the Attorney General’s Office has coordinated “regular visits” that consist of inspections by the aforementioned attorney;

- f) The State reported on the steps taken by the Ombudsman's Office in this matter in December of 2009 and January of 2010, as well as on this entity's participation in the change of cell, which in the end did not take place. In addition, the National Directorate of Penitentiary Services (DNSP according to its Spanish acronym) reported in January of 2010 on Ms. Afiuni's first request for a change of cell, in which it approved her relocation to a maximum security cell and it agreed to transfer inmates with negative behavior reports or who have insulted judge Afiuni from the INOF to other prisons; and
- g) The State confirmed that it is taking the measures necessary to protect the right to life, health and physical integrity of Ms. Afiuni. It therefore asked the Court to declare "the provisional measures requested [to her benefit] inadmissible" because she is not in a situation of extreme gravity or urgency or at risk of suffering irreparable damage.

7. The Order of the President of the Court of December 10, 2010, (hereinafter "the President's Order") whereby he ruled to:

1. Require the State to adopt, immediately, the measures necessary to guarantee the life and physical, psychiatric, and moral integrity of Ms. Maria 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 keeping 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 operative paragraph [six].

8. The State's report of December 21, 2010 regarding the implementation of urgent measures, in which it indicated:

a) In relation to operative paragraph two:

- That the space in which Ms. Afiuni is held at the INOF "meets the minimum internal security, hygiene and comfort standards established by international human rights standards," as has been confirmed in the inspections performed

by the Ombudsman's Office in this regard. In addition, it indicated that Judge Afiuni is housed away from the rest of the prison's inmates in an "optimal protection" area, with two guards posted specially at its door;

- That Ms. Afiuni confirmed to the Attorney General's Office her wish to not be transferred to DISIP, and asked permission for three inmates to be allowed into her cell to visit her and bring her food;
- Regarding her right to access to her relatives and visitors, the State argued that visits to Judge Afiuni Mora from her relatives and friends are not restricted beyond what is set forth in the Oversight Regime applied to all judicial confinement and penitentiary centers existing in any country in the world. It added that Ms. Afiuni is the inmate who has received the greatest number of special visits; and
- That Judge Afiuni "did not move about the facility's church, culture and sports area" because she herself "expressed her wish to remain under the PROTECTION of the maximum security area."

b) In relation to operative paragraph three, different steps have been taken to the benefit of Ms. Afiuni regarding her health. It presented a full list of these steps, referring to the medical record or log of each visit or test; rulings of the court that authorize transfers; the dates on which they were carried out; the medical treatment; responses to the treatment; and the attitude of the beneficiary,⁴ as well as the tests performed, if applicable;

c) That it ratifies in full its brief of December 8, 2010; and

d) that "the instant case is being processed before the United Nations' International System, which violates the international principle that a case can be presented before both systems." [sic]

9. The brief of January 5, 2011, whereby Ligia Bolivar, Maria Daniela Rivero, Carlos Ayala Corao and Jose Amalio Graterol Lafée, representatives of the beneficiary (hereinafter the "representatives"), presented their comments on the State's report (*supra* Having Seen 8) and pointed out, *inter alia*, that:

a) The State has not yet adopted the measures ordered by the Inter-American Court and its report refers to measures that were adopted prior to the President's Order;

b) Regarding the second operative paragraph:

- The location where the beneficiary remains is not an area of "optimal protection," as the State indicated, but is instead an "admission" area. Additionally, her cell is not private and she has no access to the external hallway;

⁴ The State described the official document dated November 8, 2010, detailing Judge Afiuni's transfer to Hospital Padre Machado. It indicated that at the beginning of the visit, Ms. Afiuni became aware of the presence of a soldier in the doctor's office, to which she reacted with a "rude and arrogant" attitude. Consequently, as indicated by the State's pleading, it recommended that the Board of Conduct "not allow relatives or attorneys entry to the place where the inmate is transferred so that the work for which we are appointed will not be hindered."

- The location is not considered safe for her life and integrity, which can be evidenced by the fact that the entire prison population must be locked up in order for Ms. Afiuni to go out for a walk. They also recalled that Judge Afiuni has been in danger when the “admission” door is open and no guards are present;
- Ms. Afiuni and her attorney have submitted several requests for changes to her place of confinement, and these have been refused. The existence of inmates in the INOF’s general area places her at permanent risk, since guard supervision of the “admission” area is frequently lacking;
- “[J]udge Afiuni does not enjoy the minimum sanitary conditions in her cell to subsist, nor is she provided with basic food and medicine. The authorities’ refusal to allow her the right to be exposed to sunlight has caused her much physical and psychological damage, which altogether demonstrate the State’s malicious negligence in its obligation to protect the Judge’s life and physical integrity;”
- The Board of Conduct governs only persons who have been convicted and not those awaiting trial. Its rulings regarding the beneficiary are therefore in violation of her rights as an accused party;
- On December 20, 2010, the Twenty-Sixth Court adopted several measures regarding Ms. Afiuni, but instead of executing compliance with the provisional measures, the ruling “is fraudulent and in open disregard of and noncompliance with the measures. Instead of adopting the measures necessary for the beneficiary to remain in a place of detention that is suitable to her circumstances, the State has “decided to aggravate the situation of Judge Afiuni’s preventive detention with a court ruling that orders her *isolation* [(by the Court ordering that she “be alone”)] and *estrangement* [(by ordering that she “be removed from the place where she is now”)]. This will evidently affect and worsen her life and her physical, psychological and moral integrity;⁵ and
- They recognize that the lists of visitors prepared by the State are “relatively complete, but do not [mention] the persons whose access has been denied or hindered.” They stated that the visits she receives are confined to a “dark, small space filled with mosquitoes, in order to prevent her story from being captured by cameras.”

c) Regarding the third operative paragraph, the State “did not present any evidence that at any point Maria Lourdes Afiuni, before or after the provisional measures were agreed, had been seen by ‘physicians of her choosing,’ as the Court requests.” They added that the State has not provided the beneficiary with the psychotherapy treatment recommended by the tests conducted; and

d) Contrary to what the State indicated, there is no action pending because Ms. Afiuni’s case “is not pending as such before any of the Committees of the United Nations Conventional System of International Protection.” They added that the claim

⁵ In response to the brief presented by the representatives on December 13, 2010, to request compliance with the Order of the President, the 26th Criminal Court of First Instance, operating as part of the Criminal Judicial Circuit in the Judicial District of the Metropolitan Area of Caracas, ruled in orders dated December 16 and 20, respectively, to deny the request that Ms. Afiuni be transferred to another detention center and order full solitary confinement for her, with 24-hour surveillance, allowing her to be seen, if necessary, by physicians of her choosing but at State institutions.

of actions pending has no relation to the purpose of the provisional measures procedure, and therefore should not be taken into consideration.

e) They requested, among other things, that the State be required to strictly comply with the provisional measures, as well as to guarantee, with urgency, that the actions of the Public Prosecutor's Office and the Control Court related to this matter adhere closely to strict compliance with the Court's jurisdiction and its decisions.

10. The brief of January 10, 2011, whereby the representatives presented information additional to their January 5 brief indicating that Judge Afiuni's health had worsened since that January 6 and that her "skin was yellow and she has lost the use of her legs. [She also] had a fever during the month of December" and suffered two incidents of tachycardia and low blood pressure.

11. The brief of January 10, 2011, where the Inter-American Commission presented its observations on the State's reports, and indicated that:

a) Although the State indicated that the beneficiary is in a location of "optimal protection", one can conclude from the documentation attached to its report that Ms. Afiuni is in "the same location she was prior to the issue of the urgent measures," that is, in the admission area, which "does not mean any guarantee with regard to the other prisoners." It added that the special security measures adopted by the State, such as locks on the area where she is held and the constant presence of two guards "do not seem to be the most effective for protecting her life and integrity;"

b) In its capacity as guarantor of Judge Afiuni's life and integrity due to her deprivation of liberty, the State is obligated to "protect the beneficiary without this implying improper restrictions with regard to her detention conditions, as this could contribute to increasing the particular vulnerability she faces." This comment comes following an observation that the security measures put in place "have resulted in her isolation and a series of daily restrictions at the penitentiary center." It asked the Court to assess the possibility of ordering the State to transfer Ms. Afiuni to a detention center where this risk does not exist and where it is not necessary to impose restrictions on the conditions of her detention;

c) Almost all of the information provided by the State regarding the third operative paragraph corresponds to alleged proceedings and transfers prior to the President's Order, with the only updated information being that which refers to Ms. Afiuni's transfer to the Padre Machado Cancer Hospital for a medical evaluation. Nevertheless, it stated that it does not have the information that would allow it to verify whether the transfer was conducted and what the results were. Additionally, the State did not explain "how it ensured compliance with the order to ensure that the specialized doctors that attended the beneficiary were those of her choosing;" and

d) One can note from the information submitted by the State that Judge Afiuni's case has been classified as one of "public controversy" in the update report prepared by National Director of Penitentiary Services. This has resulted in the recommendation of "strict measures." In this regard, the Commission considered it relevant to have

detailed information on the transfers and the nature of "the 'strict measures' that would be adopted."

12. The brief of February 17, 2011, where the representatives presented the following updates and a request of extension of the provisional measures:

a) Judge Afiuni's health "continued to worsen severely while she was not receiving the medical care that would allow for a timely diagnosis and adequate and timely treatment." This led to her medical examination on January 28, 2011, at a Caracas oncology hospital by hospital physicians and with the approval of the physician of her choice. She was diagnosed with several ailments and underwent surgery on February 3, 2011, in which they conducted a full abdominal hysterectomy that took place without complications. She is currently recovering post-surgery at her home. This serves as evidence of the inhumane conditions of her detention, since she was denied basic care;

b) In compliance with the recommendation of prosecutors of the Office of Protection of Fundamental Rights of the Public Prosecutor's Office, on February 2, 2011, Court No. 26 agreed on a substitute precautionary measure and ordered surgery be performed on Ms. Afiuni, and that she "be released from the Padre Machado Cancer [Hospital] and placed in her home, thereby granting this citizen [Afiuni], for health and humanitarian reasons, the precautionary measures established in article 256 subparagraphs 1, 3 and 9 of the Organic Criminal Procedural Code," ordering the following measures:

- house arrest at her own residence, without any right to exit the home;
- once the beneficiary has fully recovered at her residence, and with permission from the physicians who practiced her surgery, Judge Afiuni shall appear before the Twenty-Sixth Court of Caracas every 8 days;
- a strict prohibition on giving any statements to national or international media; and
- a strict visitation regime for non-relatives, with a maximum of five people allowed at her residence at any given time and a one-hour time period between visits.

c) while the preventive house arrest measure did "substantially improve" the inhumane conditions to which she was subjected at the INOF, the beneficiary "continues to be subjected to arbitrary detention under extremely restrictive conditions; for example, she is banned from leaving her apartment, and therefore has no direct access to sunlight;"

d) Ms. Afiuni's attorneys filed an appeal against this ruling;

e) The new ban on Ms. Afiuni making statements to the media "places her in a situation of extreme gravity and urgency that will cause irreparable harm to her freedom of speech" as it constitutes a "true 'prior censorship.'" Because of this, they asked the Court to reaffirm the urgent measures issued by the President and to "extend the provisional measures to the benefit of Judge Afiuni in order to prevent any irreparable harm from being caused to her right to freedom of expression."

13. The note of February 18, 2011, in which, as per the instructions of the President of the Court, the State and the Inter-American Commission were asked to submit any comments they considered pertinent on the representatives' reports and requests by no later than February 25, 2011, in order to provide the information to the Court during its 90th regular period of sessions.

14. The brief of February 25, 2011, whereby the Inter-American Commission indicated that the State "had not provided precise and detailed information on compliance with [...] the measures," took note "of the measure of house arrest imposed on the beneficiary" and argued "that the urgent measures ordered by the President of the Court [...] should be ratified by the full Court, since they are applicable to the beneficiary's current situation, and taking into consideration that she remains in State custody."

15. The brief of February 26, 2011, in which the State reported on compliance with the measures ordered in the President's Order and responded to the request for the broadening of the protective measures (*supra* Having Seen 12.) The State described the request of national Prosecutors 13 and 32, under the Office of Protection of Fundamental Rights of the Office of the Attorney General,⁶ "toward ensuring effective compliance" with the provisions of the Order of the President. The request recommended that the precautionary measure substituting deprivation of freedom for the beneficiary be granted. Based on this, the Twenty-Sixth Court of Caracas decided to accept the recommendations and ordered Judge Afiuni be placed under house arrest. The State also expressed that Judge Afiuni's trusted physician took part in the surgery performed on her. Finally, it confirmed the adoption of the substitutional measures of freedom ordered by the Twenty-Sixth Court of Caracas, as described by the petitioners (*supra* Having Seen 12), and it added that the beneficiary's representatives filed an appeal against some of the measures in question, meaning that the representatives may freely exercise the remedies they deemed pertinent before the courts having jurisdiction, in keeping with the nation's laws. In conclusion, the State requested that the Court:

a) assess and consider "the actions taken by State entities such as the Attorney General's Office, the Ombudsman's Office, the Courts of the Republic and agencies whose mission is to protect and defend the State in strict compliance with the measures imposed initially by the Inter-American Commission and subsequently [...] by the President of the Court, [...] in compliance with the effective protection of [Ms. Afiuni's] human rights," with her requests that her trusted physicians be involved in her medical care, diagnosis and treatment, and with regard to compliance with the visitation regimen during the period of detention at the INOF, "special for this person, as this is a case of public significance;"

b) dismiss the ratification of the urgent measures adopted by the President, as the Twenty-Sixth Court of Caracas issued a ruling "based on humanitarian reasons related to the poor health of Ms. Afiuni" and ordered she be placed under house arrest, "eliminating the central argument" of the petitioners for the granting of these urgent measures; and

⁶ In case 26-J-486-10 on Ms. Afiuni, in which they indicated that considering the health of Judge Afiuni and the recognition of health as a 'fundamental right, inalienable and defensible by all State structures,' the Ombudsman's Office is responsible to 'actively intervene in human rights matters.'

c) dismiss the broadening of the urgent measures, considering that while the representatives only partially consent to the content of the ruling of the Twenty-Sixth Court, the laws in force in Venezuela “set forth the pertinent remedies to be exercised [...] against the ruling issued by the [Court] on February 2, 2011.”

CONSIDERING THAT:

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

2. Article 62(3) of the American Convention stipulates that “in cases of extreme gravity and urgency, and when necessary to prevent irreparable harm to persons, the Court, in the matters it has under consideration, may take the provisional measures it deems pertinent. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”

3. Pursuant to Article 27 of the Rules of Procedure of the Court:⁷

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.

[...]

4. The Court has pointed out that provisional measures have two natures: precautionary and protective.⁸ The precautionary nature of provisional measures is related to the context of international cases. In this sense, the purpose and goal of these measures is to preserve rights potentially at risk while the dispute remains unresolved. Their purpose and goal is to ensure the integrity and effectiveness of the decision on the merits, and thus prevent the violation of the rights in question, a situation that could render moot or invalidate the usefulness of the final decision. The provisional measures thus allow the State in question to comply with the final decision, and, where applicable, proceed with the reparations ordered.⁹ With regard to the protective nature of the provisional measures, this Court has indicated that the provisional measures are a true legal guarantee of a preventive

⁷ Rules of Procedure of the Court approved at its LXXXV Regular Period of Sessions held from November 16 to 28, 2009.

⁸ Cf. *Case of Herrera Ulloa v. Costa Rica (Periódico “La Nación”)*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering 4; *Matter of Belfort Istúriz et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering 6; and *Matter of COFAVIC- Case of the Caracazo*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering 4.

⁹ Cf. *Matter of El Rodeo I and El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 8, 2008, Considering 7; *Matter of Belfort Istúriz et al*, *supra* footnote 6, Considering 6; *Matter of COFAVIC- Case of the Caracazo*, *supra* note 6, Considering 4.

character,¹⁰ as they protect human rights insofar as they seek to prevent irreparable damage to persons.¹¹

5. The Court recalls that according to the Preamble to the American Convention, international protection in the form of a convention “reinforc[es] or complement[s] the protection provided by the domestic law of the American states.” Therefore, on finding that the State in question has implemented mechanisms or taken protective actions that are effective for the beneficiaries of the provisional measures, the Court can rule to lift the provisional measures, placing the duty of protection upon the responsible party - that is, the State.¹² If the provisional measures are lifted by the Court for this reason, it falls to the State, per its duty to guarantee human rights, to maintain the protective measures that it has adopted and that the Court deemed effective, and to do so for the period of time required by the circumstances.

6. Regarding this, and pursuant to the information submitted, the Court agrees with and shares the reasons for which the President ordered, through the Order of December 10, 2010, urgent measures under the circumstances described by the Inter-American Commission at the time the provisional measures were submitted for request, and fully agrees with the decision made at that time.

7. The Court observes that according to the information reported (*supra* Having Seen 12 and 15), the State has adopted a series of measures to comply with the order of the President of the Court granting the urgent measures.

8. Additionally, the Court verifies that given the events that subsequently occurred, currently the factual situation on which the adoption of urgent measures to the benefit of Ms. Afiuni was based no longer exists. Evidently the beneficiary's situation of risk has not been completely eliminated, but the situation of vulnerability in which those deprived of liberty live is an inherent characteristic of this condition. In this regard, the Court observes that the adoption of substitute measures of preventive detention that change the conditions of Judge Afiuni's detention by placing her under “house arrest” demonstrate that her current situation does not meet the standard of gravity previously verified and that the urgency and imminence of the situation are no longer present.

9. With regard to the eventual need for specialized medical care from doctors of Judge Afiuni's choosing, the Court observes that in response to the brief presented by the representatives on December 13, 2010, to request compliance with the President's Order,

¹⁰ Cf. *Case of Herrera Ulloa v. Costa Rica* (*Periódico “La Nación”*), *supra* footnote 6, Considering 4; *Matter of Gladys Lanza Ochoa*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of September 2, 2010, Considering 6, 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 1, 2010, Considering 6.

¹¹ Cf. *Matter of El Rodeo I and El Rodeo II Judicial Confinement Center*, *supra* footnote 7, Considering 8; *Matter of Gladys Lanza Ochoa*, *supra* footnote 8, Considering 6, and *Matter of Centro Penitenciario de Aragua “Cárcel de Tocarón”*, *supra* footnote 8, Considering 6.

¹² Cf. *Matter of Luis Uzcátegui*. Provisional Measures regarding Venezuela. Order of the Court of February 20, 2003, Considering 13; *Case of the Plan de Sánchez Massacre in favor of the members of “Equipo de Estudios Comunitarios y Acción Psicosocial” (ECAP)*. Provisional Measures regarding Guatemala. Order of the Court of July 8, 2009, Considering 6, and *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the President of the Inter-American Court of Human Rights of November 26, 2010, Considering 40.

the Twenty-Sixth Court of Caracas ruled on December 20, to allow the beneficiary to be seen, if necessary, by physicians of her choosing, but at State institutions. Additionally, the Court observes that according to information submitted by the representatives themselves, the State has complied with this order, especially in the surgery performed on the beneficiary with the participation of the physician of her choosing. In this sense, the Court weighs the information presented by the representatives and concludes that the State has contributed to compliance with another objective of the provisional measures with the medical attention provided to Ms. Afiuni by physicians of her choosing.

10. Regarding the request to broaden the provisional measures, the Court observes that with regard to the restriction on the beneficiary from making statements to the media, the representatives indicated that the measure places Judge Afiuni "in a situation of extreme gravity and urgency that would cause irreparable harm to her freedom of expression," representing as it does true 'prior censorship'" (*supra* Having Seen 12.d.) They also argued that because of the terms and circumstances under which her arrest was ordered, the provisional measures are necessary because her detention was 'arbitrary' (*supra* Having Seen 12.c.). Regarding this, the Court finds that the alleged prior censorship and arbitrary detention to which Ms. Afiuni's has been subjected have to do with the case's merits. In this sense, an absence of pleadings on the part of the representatives makes it impossible to differentiate between the aspects related to the character and nature of the provisional measures ordered and the issues that should be settled on the merits of the petition. The Court recalls that in the event of a request for the adoption (or broadening) of provisional measures, it cannot consider any argument that is not strictly related to extreme gravity, urgency and need to prevent irreparable harm to people. Any other matter should be resolved in the context of the merits of the case in question.¹³ Consequently, the Court finds the request for the extension of provisional measures inadmissible.

11. Additionally, it must be recalled that this matter is being processed before the Inter-American Commission, and that it was this entity that requested the provisional measures. In its brief of February 28, 2011 (*supra* Having Seen 14), the Commission only requested the ratification of the measures "to the extent that [they are] applicable to the beneficiary's current situation." However, it did not provide information demonstrating the need to keep the measures in force under Ms. Afiuni's current conditions of detention. It is therefore appropriate to lift the urgent measures. This is without prejudice to what the Inter-American Commission may later on consider pertinent in the event that Ms. Afiuni's situation should change.

12. Lastly, the Court reiterates that Article 1(1) of the Convention establishes the general obligations of States parties to respect the rights and freedoms recognized therein and to ensure their free and full enjoyment by any person subject to its jurisdiction, in any circumstance. The provisional measures, for their part, are exceptional in nature and complementary to this general obligation of the States. In this sense, the Court's lifting of the provisional measures does not mean that the State is relieved of its obligation to protect under the Convention. The Court thus emphasizes that regardless of the existence of

¹³ Cf. *Case of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, Considering 6; *Matter of the Colombian Commission of Jurists regarding Colombia.* Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of November 25, 2010, Considering 7, and *Matter of the "Comisión Intereclesial de Justicia y Paz."* Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 22, 2010, Considering 7.

specific provisional measures, the State is under the obligation to guarantee Ms. Afiuni's rights.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority granted by Article 63(2) of the American Convention on Human Rights and Article 27 of the Rules of Procedure of the Court, and considering that the factual situation on which the adoption of the urgent measures in the Order of the President (*supra* Considering 6 to 11) was based does not persist,

DECIDES TO:

1. Dismiss the request to broaden the provisional measures filed by the representatives of Ms. Maria Lourdes Afiuni.
2. Lift the urgent measures ordered by the President of the Inter-American Court of Human Rights to protect the life and integrity of Ms. Maria Lourdes Afiuni on December 22, 2010.
3. Order the Secretariat of the Court to notify the State, the Inter-American Commission and the representatives of the victims of this Order.
4. Close the file on this matter.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary