

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 15, 2011**

**PROVISIONAL MEASURES
REGARDING VENEZUELA**

MATTER OF NATERA BALBOA

HAVING SEEN:

1. The Order of President of the Inter-American Court of Human Rights (hereinafter “the President”) dated December 1, 2009, ruling to, *inter alia*:

1. Require the State to adopt, immediately, the measures necessary to determine the status and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity.

2. Order that the State must report to the Inter-American Court no later than December 8, 2009, with regard to the order found in the first operative paragraph of this [...] Order.

3. Require, likewise, that the State inform the Inter-American Court of Human Rights every two months, beginning on December 8, 2009, of the provisional measures adopted in conformity with this decision.

4. Request that the representatives of the beneficiary and the Inter-American Commission present to the Inter-American Court any comments they deem necessary on the report mentioned in the second operative paragraph of the [...] Order no later than December 16, 2009.

5. Request that the representatives of the beneficiary and the Inter-American Commission present their comments within four and six weeks, respectively, counting from notification of the State reports indicated in the third operative paragraph.

6. Order that this matter be heard by the full Tribunal during its LXXXVI Ordinary Period of Sessions, to be held at the seat of the Court in San José, Costa Rica, from January 25 to February 6, 2010.

[...]

2. The order issued by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court,” “the Court,” or “the Tribunal”) on February 1, 2010, ruling to, *inter alia*:

1. Ratify the Order of the President of the Court of December 1, 2009 and, therefore, the State shall immediately adopt the measures necessary to determine the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity.

2. Reiterate that the State has the obligation to inform the Inter-American Court in a specific and detailed manner of the implementation of the measures ordered.

3. Require the State to inform the Inter-American Court, no later than February 28, 2010, with regard to the provisions of the first operative paragraph of this Order.

[...]

5. Indicate that the State shall inform the Inter-American Court, every two months, as of February 28, 2010, of the measures adopted pursuant to this decision.

3. The note from the Secretariat dated March 25, 2010, in which it reminded the Bolivarian Republic of Venezuela (hereinafter “the State” or “Venezuela”) that in keeping with the third operative paragraph of the Order handed down by the Court on February 1, 2010, (*supra* Having Seen 2), the deadline granted to the State of Venezuela for submitting its report on the measures that would be necessary for establishing the status and whereabouts of Eduardo José Natera Balboa and protecting his life and personal integrity had expired on February 28, 2010, without the report having been received by the Secretariat of the Tribunal. Therefore, following the instructions of the President of the Tribunal, the State was reminded of the requirement that the aforementioned report be submitted as quickly as possible.

4. The brief dated May 26, 2010, in which the State of Venezuela submitted the report on the measures needed for determining the status and whereabouts of Eduardo José Natera Balboa and for protecting his life and personal integrity, in keeping with the requirements of the third operative paragraph of the Order of the Court dated February 1, 2010 (*supra* Having Seen 2).

5. The briefs dated June 9, 2010, in which the representatives of the beneficiary and the Inter-American Commission on Human Rights each submitted their comments on the report from the State (*supra* Having Seen 4).

6. The notes from the Secretariat dated November 11, 2010, and February 11 and April 8, 2011, reminding the Venezuelan State that pursuant to the fifth operative paragraph of the Order of the Tribunal dated February 1, 2010 (*supra* Having Seen 2), it must report to the Inter-American Court every two months starting on February 28, 2010, with regard to the implementation of the provisional measures ordered in this matter.

Therefore, following the instructions of the President of the Tribunal, the State was reminded of the requirement that the aforementioned bimonthly reports be submitted as quickly as possible. As of the issuing of this Order, the State's bimonthly reports have not been received.

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the 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. The provisions established in Article 63(2) of the Convention make the provisional measures ordered by this Tribunal obligatory, as the basic principle of International Law, based on international case law, has indicated that States must comply with their obligations under the Convention in good faith (*pacta sunt servanda*).¹ These orders imply a special duty to protect the beneficiaries of the measures as long as they are in force. A failure to comply with them can leave the State internationally responsible.²

4. Article 63(2) of the Convention requires that in order for the Court to issue provisional measures, three conditions must be met: i) "extreme gravity;" ii) "urgency," and iii) "avoiding irreparable damage to persons." These three conditions coexist and must be present in every situation in which the Tribunal's intervention is requested. In the same way, the three conditions described must persist in order for the Court to maintain the protection it has ordered. If one of those conditions has ceased to be relevant, it will be up to the Tribunal to weigh the pertinence of continuing with the protective measures

¹ 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, 19, Considering 6; *Matter of Mery Naranjo*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of March 4, 2011, Considering 4, and *Case of Caballero Delgado and Santana*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of February 25, 2011, Considering 3.

² Cf. *Case of Hilaire, Benjamin, Constantine et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, paras. 196 to 200; *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of November 26, 2010, Considering 4, and *Case of the 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of August 26, 2010. Considering 3.

ordered.³

5. Since these provisional measures were ordered, the Venezuelan State has submitted only one bimonthly report, on May 26, 2010. That report indicated that an investigation is being carried out by the 68th District Attorney's Office of the National Public Prosecutor with Full Jurisdiction in the Bolívar State Judicial Circuit. In the context of that investigation, a series of procedures have been carried out "to fully clear up the circumstances of manner, place and time of the escape or forced disappearance of Eduardo José Natera Balboa." Those procedures include an interview with one of the supposed witnesses to the facts, as well as an interview with an official with the Bolivarian National Guard of Venezuela, who was also a witness. As far as the *habeas corpus* action brought by the relatives of the beneficiary, the Fourth Court of the First Control Instance of the Criminal Judicial Circuit of Bolívar State ruled on November 16, 2009, that the action be combined with the criminal case "in order to avoid the proliferation of conflicts [...] that can be resolved in a single proceeding." Later, on December 30, 2009, the Public Prosecutor's Office filed charges against 10 officials of the Bolivarian National Guard, three officials of the Ministry of People's Power for Domestic Relations and Justice, as well as the former director of the General Penitentiary of Venezuela for the crimes of facilitation of continuing and aggravated escape, corruption, and conspiracy to commit crimes, all based on the "aforementioned officials' alleged collaboration in the presumed escape" of the beneficiary "at the moment the garbage was taken out, placing him in one of the containers used for that purpose, along with a laptop computer." On May 10, 2010, after ordering the measure of preventative detention, a preliminary hearing was planned and deferred until the following day. The State has not provided any further information.

6. The representatives expressed that the combination of the action of *habeas corpus* with the criminal investigation distorts the essence of *habeas corpus*, "which tends toward providing quick protection of the rights to freedom and even the personal integrity and life of an individual." They advised that the action of *habeas corpus* was submitted on November 16, 2009, and as of June 2010 "it [had] not been decided." According to the representatives, Mr. Natera has been missing since November 8, 2009, "and the State has not taken the measures necessary to determine his status and whereabouts." With regard to the investigation, the representatives indicated that charges were filed for the crime of facilitation of continuing and aggravated escape and that the State must take into account that what is at issue could be a forced disappearance. Likewise, they reported that the preliminary hearing was carried out on May 25, 2010, and that the Fourth Court of the Second Control Circuit of Bolívar State fully annulled the accusation due to various errors. It asked the Office of the Public Prosecutor to resolve the errors and ordered the precautionary measure of release with the requirement that the accused officials appear once every 30 days.

³ Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering 14; *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of February 22, 2011, Considering 2, and *Matter of A.J. et al.* Provisional Measures regarding Haiti, Order of the Inter-American Court of Human Rights of February 22, 2011, Considering 10.

7. The Commission expressed concern over the fact that the State has not deployed all the measures necessary for establishing the whereabouts of Mr. Natera Balboa. It highlighted that “the State has limited itself to opening a criminal investigation based on the assumption that the beneficiary escaped from the penitentiary and does not consider the possibility that he has been the victim of a forced disappearance,” which would explain “the apparent lack of activity that has characterized the investigations.” In addition, it noted that it was “especially grave [...] that the only theoretically expeditious judicial measure available to the family members - that is, the *habeas corpus* action - was to be combined with the criminal investigation.” The Commission recalled that in this particular matter, there were indications that what had happened to the beneficiary could be a forced disappearance, for which reason an immediate, complete and independent investigation is required “due to the situation of extreme risk evidenced by [these] facts.” According to the Commission, the delay or lack of immediate response in a case such as this one in itself implies danger, for which reason it asked the Court to reiterate to the State the requirement that it take specific measures aimed at establishing the whereabouts of Mr. Natera and protecting his life and personal integrity, “measures that cannot be limited to simply continuing the criminal investigation reported.”

8. In this regard, it is important to recall that whenever there is good reason to suspect that an individual has been subjected to a disappearance, it is crucial that prompt and immediate action be taken by prosecutorial and judicial authorities to order timely and necessary measures aimed at determining the whereabouts of the victim or the place where the victim might be found deprived of liberty.⁴ Separately, in situations of individuals deprived of liberty - like this one - *habeas corpus* represents, in the range of indispensable judicial guarantees, the ideal measure for determining the status and the whereabouts of Mr. Natera, as well as for controlling respect for his life and protecting his personal integrity.

9. Of the information provided, there is no indication that the State has responded to the *habeas corpus* action brought by the relatives of Mr. Natera on November 16, 2009, as they proceeded to combine it with the open criminal investigation. Given the lack of information on the whereabouts of Mr. Natera Balboa, it can be assumed that he still faces a grave risk that his rights to life and personal integrity will be violated.

10. In keeping with the Order of the Court (*supra* Having Seen 2), the State must immediately adopt the measures necessary to determine the status and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity. Likewise, bimonthly reports on this must be submitted, as since these provisional measures were ordered, the Venezuelan State has submitted only a single bimonthly report - on May 26,

⁴ Cf. *Case of Anzualdo Castro v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 134; *Matter of Alvarado Reyes et al.*, *supra* footnote 2, Considering 20, 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 13.

2010 - and in the course of the last year it has not submitted any information despite the requests made (*supra* Having Seen 6).

11. As concerning the implementation of the provisional measures ordered, it is necessary to recall that obligated States must carry out all procedures necessary for the effective protection of the measures' beneficiaries in keeping with the instructions of the Court. This obligation includes the duty to report to the Tribunal with regard to the implementation of provisional measures according to the deadline and periodicity indicated by the Tribunal.⁵

12. In this case, the State has not complied with its duty to report in a proper and timely fashion. The Court has established that a State's failure to comply with its duty to report fully on the provisional measures adopted toward complying with the Court's orders is especially grave given the juridical nature of these measures, as they seek to prevent irreparable damage to persons facing extremely grave and urgent situations.⁶ It is extremely urgent that the State submit a full report given that it has not turned in the six bimonthly reports that it was supposed to have presented between May 2010 and May 2011. For this reason, the Court urges the State to report in the most urgent and conscientious way possible on the status and whereabouts of Mr. Natera Balboa, along with the measures taken in his favor and toward attending the need for protection in this matter.

13. The Tribunal finds it pertinent to recall 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 can only be examined and resolved during the deliberations on the merits in the adversarial case.⁷ Thus, the adoption of provisional measures does

⁵ Cf. *Matter of Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering 12; *Matter of Eloisa Barrios et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 21, 2011, Considering 23, and *Matter of Natera Balboa*, Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 1, 2010, Considering 15.

⁶ Cf. *Case of the Urso Branco Prison*. Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of July 7, 2004, Considering 16; *Case of the Mapiripán Massacre*, Provisional Measures regarding Colombia, Order of the Inter-American Court of Human Rights of May 3, 2008, Considering 10, and *Matter of the Jiguamiandó and Curbaradó Communities*. Provisional Measures regarding Colombia, Order of the Inter-American Court of Human Rights of February 7, 2006, Considering 16.

⁷ Cf. *Matter 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, and *Matter of Fernández Ortega et al.*, *supra* footnote 1, Considering 18; and *Matter of Carlos Nieto Palma et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 26, 2009, Considering 22. *Matter of the Socio-Educational Internment Facility*. Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of February 25, 2011, Considering 9, and *Matter of the Colombian Commission of Jurists*. Request for Provisional Measures regarding Colombia, Order of the Inter-American Court of Human Rights of November 25, 2010, Considering 7.

not imply an eventual decision on the merits of the current dispute between the petitioners and the State should the case in the end come before the Court,⁸ nor does it prejudge State responsibility for the facts denounced.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by way of the authority conferred by Article 63(2) of the American Convention on Human Rights and articles 27 and 31 of the Rules of Procedure of the Tribunal,⁹

DECIDES TO:

1. Reiterate that the State must adopt, immediately, the measures necessary to determine the status and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity.
2. Reiterate that the State has the obligation to inform the Inter-American Court in a specific and detailed manner on the implementation of the measures ordered.
3. Order the State to report to the Inter-American Court no later than June 30, 2011, with regard to the provisions of the first operative paragraph of this Order. Following the submission of that report, the State must continue to report to the Inter-American Court every two months on the measures adopted to the benefit of the beneficiary of the provisional measures ordered in this matter. The representatives of the beneficiaries and the Inter-American Commission on Human Rights must also submit their comments within four and six weeks, respectively, from the moment they are notified of the State reports.
4. Order the Secretariat of the Court to notify the State, the Inter-American Commission and the beneficiary's representatives of this Order.

⁸ Cf. *Case of James et al. supra* footnote 7, Considering 6; *Matter of the Socio-Educational Internment Facility, supra* footnote 7, Considering 9, and *Matter of the Colombian Commission of Jurists, supra* footnote 7, Considering 7.

⁹ Rules of Procedure of the Court approved in its LXXXV Ordinary Period of Sessions held on November 16-28, 2009.

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