

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS<sup>1</sup>**

**OF JULY 1, 2011**

**PROVISIONAL MEASURES  
WITH REGARD TO PARAGUAY**

**MATTER OF L.M.<sup>2</sup>**

**HAVING SEEN:**

1. The brief of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) of May 23, 2011 and its attachments, whereby it submitted to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) a request for provisional measures in accordance with Articles 63(2) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and 27 of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure”), for the Court to require the Republic of Paraguay (hereinafter “Paraguay” or “the State”) to “expedite the domestic proceedings and the decisions concerning the best interest of the child L.M. – one and a half years old - including, as soon as possible, the decisions concerning contact with his biological family.”

2. The background information submitted by the Commission related to the request for provisional measures, namely:

- a) The child L.M. was born on August 2, 2009, in Asunción, Paraguay.<sup>3</sup> According to the petitioners, L.M. is the son of L.S. (26 years) and V.H.R. (22 years), who were in a relationship for about one year and decided to separate in April 2009 when L.S. was unaware of her pregnancy. Due to family circumstances, L.S. hid her pregnancy from her family and from the father of the child. According to the information provided, L.S. left the hospital two days after her son was born and, owing to her vulnerable emotional state, she handed L.M. over at the door of the San Bautista Church in Asunción;
- b) After learning what had occurred from a couple who took L.M. in, on August 5, 2009, the Public Prosecutor’s Office opened a case called “Newborn Male [...] without Measures of Protection and Support” before the Judge of First Instance for Children and Adolescents (hereinafter “the First Instance Judge”).<sup>4</sup> The judge

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<sup>1</sup> Judge Alberto Pérez Pérez advised the Court that, for reasons beyond his control, he would be unable to attend the deliberation and signature of this order.

<sup>2</sup> At the request of the Inter-American Commission the identity of the child for whom the provisional measures are requested will be kept confidential, and the child will be identified with the letters “L.M.” The identity of the individuals involved in the domestic proceedings will also remain confidential; namely, the child’s alleged biological family, and those who have acted as the “foster family” or “the family with custody.”

<sup>3</sup> Cf. Birth certificate (attachment 1 to the request for provisional measures submitted by the Commission).

<sup>4</sup> Cf. Complaint of the Public Prosecutor’s Office of August 5, 2009 (attachment 2 to the request for provisional measures submitted by the Commission). Cf. Decision of the Children and Adolescents Court of First Instance of August 10, 2009, (attachment 3 to the request for provisional measures submitted by the Commission).

ordered a search for the next of kin of L.M. and, on August 10, 2009, granted provisional custody of the child to the B.I.<sup>5</sup> family. The B.I. family was appointed the "foster family,"<sup>6</sup> "as an essentially precautionary measure" until his legal situation was defined, and after the Adoption Center had proposed the family owing to its previous experience in this role;<sup>7</sup>

- c) On September 17, 2009, the married couple composed of E.A.P. (who is a judge of the Republic among other activities) and O.O.Z - who were taking steps to adopt a child – asked for provisional custody of L.M.
- d) On November 10, 2009, after a "social and environmental study" of the O-A family had been conducted, a judicial ruling was issued revoking the provisional custody exercised by the B.I. family, and granting custody to the O-A family. The same ruling ordered that L.M. be registered in the Registry Office;<sup>8</sup>
- e) On November 12, 2009, the same day that the child was given to the O-A family, the Adoption Center attached to the Children and Adolescents Secretariat reported that it had found the child's biological parents, and indicated, *inter alia*, the following:
 

[...] understanding that the child has not yet been transferred, that the biological parents have been found, and that the possibility of reinsertion exists, we believe that, at this time, it would not be appropriate to transfer the child from a foster family to a family that intends to adopt;<sup>9</sup>
- f) On November 16, 2009, L.S. and V.H.R. registered L.M. as their son in the Civil Registry Directorate General;<sup>10</sup>
- g) On November 18, 2009, V.H.R. appeared before the court, presented the registration he had filed, and expressed his intention of assuming responsibility for L.M., explaining that he had been unaware of the situation and requesting that the child to be handed over to him. Specifically, he asked that the provisional custody granted to the O-A family be revoked;<sup>11</sup>
- h) On November 19, 2009, in a petition filed by the couple O-A, a proceeding for forfeit of parental authority (*patria potestad*) was initiated against L.S. Regarding this proceeding, the State indicated that "all of the files from the Children and Adolescents Jurisdiction were sent to the Second Criminal Court for Adolescents,

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<sup>5</sup> Cf. Decision of August 10, 2009 of the Children and Adolescents Court of First Instance (attachment 3 to the request for provisional measures submitted by the Commission).

<sup>6</sup> The information available indicates that this expression differs from that of "adoptive family" in that the former seeks to protect the child while his or her situation is being resolved, while the latter is of a definitive nature.

<sup>7</sup> Cf. Decision of the Children and Adolescents Court of First Instance of August 10, 2009 (attachment 3 to the request for provisional measures submitted by the Commission) and decision of the Children and Adolescents Court of First Instance of July 2, 2010 (attachment 4 to the request for provisional measures submitted by the Commission).

<sup>8</sup> Cf. Decision of November 10, 2009 (attachment 5 to the request for provisional measures submitted by the Commission).

<sup>9</sup> Report of the Adoption Center of November 12, 2009 (attachment 6 to the request for provisional measures submitted by the Commission).

<sup>10</sup> Cf. Birth certificate (attachment 1 to the request for provisional measures submitted by the Commission).

<sup>11</sup> Cf. Brief of V.H.R. of November 18, 2009 (attachment 7 to the request for provisional measures submitted by the Commission).

because this was the appropriate body, since all the other Children and Adolescents Courts had disqualified themselves;<sup>12</sup>

- i) On November 20 and 25, 2009, the Technical Team for Maintenance of Family Relationships of the Children and Adolescents Secretariat's Adoption Center, and the "*Corazones por la Infancia*" Foundation, respectively, issued reports in which they indicated the pertinence of reinserting L.M. into his biological family;<sup>13</sup>
- j) In view of the request by V.H.R. to revoke the provisional custody, on December 14, 2009, a hearing was held before the Third First Instance Judge for Children and Adolescents, during which V.H.R. and L.S. ratified before this judicial authority their request to assume responsibility for the child. In this procedure, the First Instance Judge ordered the intervention of the Judiciary's Office for Maintenance of Relationships and for "social and environmental studies" to be conducted;<sup>14</sup>
- k) After the hearing, L.S. asked the First Instance Judge to order the necessary measures to allow her to visit her son during the end-of-year festivities. She also stated expressly that she would not give her consent to an adoption and, as a precautionary measure, requested that L.M. be prohibited from leaving the country;<sup>15</sup>
- l) On February 19, 2010, based on the petition filed by the O-A couple, proceedings to challenge paternity were initiated against V.H.R. After several judges had disqualifying themselves, the file was forwarded to the Adolescents Criminal Court on August 31, 2010;<sup>16</sup>
- m) On July 2, 2010, the First Instance Judge issued a ruling in first instance revoking the custody granted to the O-A couple, and ordering the restitution of the child L.M. to V.H.R., with temporary monitoring by a social worker. In addition, a contact and visits regime was established for the child with his mother and his extended maternal family;<sup>17</sup>
- n) As the State reported to the Commission, criminal proceedings were opened for abandonment and others offenses against V.H.R. and L.S., and are being processed by the Sixth Criminal Guarantee Court. Although the date when the proceedings

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<sup>12</sup> Cf. Brief of the State of Paraguay to the IACHR of September 21, 2010 (attachment 16 to the request for provisional measures submitted by the Commission).

<sup>13</sup> Cf. Reports of the Technical Team of the Children and Adolescents Secretariat of November 20 and 25, 2009 (attachment 8 to the request for provisional measures submitted by the Commission), and Report of the *Corazones por la Infancia* Foundation of November 25, 2009 (attachment 9 to the request for provisional measures submitted by the Commission).

<sup>14</sup> Cf. Transcript of the hearing of December 14, 2009 (attachment 10 to the request for provisional measures submitted by the Commission).

<sup>15</sup> Cf. Request by L.S. to the First Instance Judge for Children and Adolescents of December 2009 - the exact date of presentation is illegible (attachment 11 to the request for provisional measures submitted by the Commission).

<sup>16</sup> Cf. Brief of the State of Paraguay to the IACHR of September 21, 2010 (attachment 16 to the request for provisional measures submitted by the Commission); and brief of the State of Paraguay to the IACHR of October 18, 2010 (attachment 17 to the request for provisional measures submitted by the Commission);

<sup>17</sup> Cf. Ruling of July 2, 2010, by the Children and Adolescents Court of First Instance (attachment 4 to the request for provisional measures submitted by the Commission). In this ruling the exceptional character of a decision relating to the separation of a child from his/her biological nuclear or extended family was taken into consideration, and the priority that must be given to the biological family in this type of situation. In addition, it mentioned the existence of an extended biological family – even if the parents were sentenced and convicted in the criminal jurisdiction – as well as the Adoption Center's favorable report on the father.

were initiated was not mentioned, the investigation began by a court order of July 7, 2010;<sup>18</sup>

- o) On August 18, 2010, the Children and Adolescents Court of Appeal annulled the July 2, 2010, decision of the First Instance Judge. In this decision the Court of Appeal indicated that there were a number of proceedings that, in its opinion, should be conducted simultaneously, because their effects were interrelated. In addition, it mentioned that the court hearing the case could establish an interim measure regarding contact with the biological family.<sup>19</sup> In the words of the Court of Appeal:

Given that the guardians have filed an action for forfeit of parental authority against [L.S.], and to challenge the paternity of V.H.R. [...] and the parents have been charged in criminal proceedings for the offenses of abandonment and violation of educational or civic obligations, [...] we cannot predict what the criminal court will decide; however, it cannot be ignored that the criminal charges, the forfeit of parental authority, and the challenge to paternity in this jurisdiction are interconnected owing to their effects and, consequently, the judgment appealed conflicts with the appropriate procedures in the three lawsuits, whose results cannot be known until there are judicial decisions accepting or rejecting the actions and, naturally, that these are final.

[...]

The court that follows in the order of rotation is empowered to establish, according to the circumstances, some type of interim contact while the actions are being processed;<sup>20</sup>

- p) On September 16, 2010, the file was sent again to the Second Court whose regular judge had been disqualified from the case. On September 20, 2010, the file was pending transfer to the Adolescents Criminal Court, which at the time of the presentation of the Commission's request was "on a leave due to travel";<sup>21</sup>
- q) On October 8, 2010, L.S. asked the First Adolescents Criminal Court to establish contact between L.M. and his parents and maternal grandparents; to require the guardians to provide information on the child's condition, and that the measures ordered previously of the psychological, social and environmental studies of the biological parents be conducted, to give continuity to the process of maintaining the relationship. V.H.R. made a similar request on the same date;
- r) On October 19, 2010, the Adolescents Criminal Court rejected these requests, and ordered that the social worker be present in the home of the O-A family to monitor the custody granted.<sup>22</sup> The Commission indicated that, as of January 2011, this measure had not been executed;
- s) The decision of October 19, 2010, was appealed by L.S.,<sup>23</sup> and is currently pending a ruling;

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<sup>18</sup> Cf. Brief of the State of Paraguay to the IACHR of October 18, 2010 (attachments 16 and 17 to the request for provisional measures submitted by the Commission).

<sup>19</sup> Cf. Decision of the Children and Adolescents Court of Appeal of August 18, 2010 (attachment 15 to the request for provisional measures submitted by the Commission).

<sup>20</sup> Cf. Decision of the Children and Adolescents Court of Appeal of August 18, 2010 (attachment 15 to the request for provisional measures submitted by the Commission).

<sup>21</sup> Cf. Brief of the State of Paraguay to the IACHR of September 21, 2010 (attachment 16 to the request for provisional measures submitted by the Commission).

<sup>22</sup> Cf. Decision by the Adolescents Criminal Court of October 19, 2010 (attachment 20 to the request for provisional measures submitted by the Commission).

<sup>23</sup> Cf. Appeal filed by L.S. against the decision of October 19, 2010 (attachment 21 to the request for provisional measures submitted by the Commission).

- t) On November 5, 2010, L.M.'s parents filed requests for a contact regime with the child before the Children and Adolescents Court, regarding which disqualifications and recusals also occurred. The results of these actions was not provided, and
- u) The maternal grandparents of L.M. filed a request for custody of the child and requested a provisional contact regime. The results of this action were not provided;<sup>24</sup>
- v) On March 21, 2011, the National Children and Adolescents Secretariat's Adoption Center submitted the report on the psychosocial and legal aspect of maintaining the relationship within the framework of the main custody proceeding;<sup>25</sup> based on this, it indicated that "it would be desirable that the Court:
  - 1. Revoke the provisional custody of the child [L.M.] granted to O.Z. and E.A.P.
  - 2. Order the reinsertion of the child [L.M.] with his maternal grandparents, [A.S.] and [T.M. de S], or with the biological father [V.H.R.], or the biological mother L.S, who are able to assume responsibility for raising and caring for the child, mainly because the current family group encourages mutual help and shared responsibilities."<sup>26</sup>

3. The processing of the request for precautionary measures and the petition before the Inter-American Commission:

- a) On June 17, 2010, the *Coordinadora por los Derechos de la Infancia y la Adolescencia* [Coordinator of the Rights of Children and Adolescents] (hereinafter "CDIA") and the Center for Justice and International Law (hereinafter "CEJIL") filed a request for precautionary measures before the Commission. Petition 1474/10 was opened;
- b) On July 26, 2010, the Commission asked the State to submit information on the following aspects within 10 days,:
  - a. Whether the biological parents have access to the child while the judicial proceedings take place. If not, the State should provide the reasons;
  - b. Based on the best interests of the child and the alleged effects that this situation could have on the relationship of the proposed beneficiary and his parents, indicate the duration of the proceedings to decide on the custody of the child, and whether there is any expedite procedure under Paraguayan law so that his situation can be decided as soon as possible; and
  - c. Any information that the State deems pertinent with regards to the situation described by the petitioner;<sup>27</sup>
- c) On August 23, 2010, the State submitted its response confirming the essential elements of the proceedings indicated by the petitioners, and adding the following information on the points raised by the Commission:
  - a. At the date of presentation of the report, "the Court of the original proceedings ha[d] not ordered the precautionary measure of a provisional contact regime while the trial was being

<sup>24</sup> Cf. Petitions to have access to the child filed by L.S., V.H.R. and the maternal grandparents in November 2010 (attachment 22 to the request for provisional measures submitted by the Commission).

<sup>25</sup> Cf. Report on the psychosocial and legal aspects for maintaining the relationship issued by the Adoption Center and dated March 10, 2011 (attachment 25 to the request for provisional measures submitted by the Commission).

<sup>26</sup> Report on the psychosocial and legal aspects for maintaining the relationship issued by the Adoption Center and dated March 10, 2011 (attachment 25 to the request for provisional measures submitted by the Commission).

<sup>27</sup> Communication addressed by the IACHR to the State of Paraguay of July 26, 2010 (attachment 14 to the request for provisional measures submitted by the Commission).

- held," and the file remained at the Children and Adolescents Appeals Chamber, based on the judgment of first instance.
- b. The judge of the original proceedings disqualified herself from the case in question, "forwarding it to the next corresponding judge, who also disqualified himself, and so on, until it reached the Second Children and Adolescents Court";
  - c. Regarding the procedural time frames, the State's response indicates that "all the procedural norms governing the children and adolescents jurisdiction establish a summary procedure, under which the court of first instance has only six days to issue a decision. In addition, the courts of appeal have 10 days from the start of the appeal proceedings to deliver a ruling";<sup>28</sup>
- d) On November 10, 2010, the Commission decided to grant precautionary measures, after analyzing the situation and "in view of a lack of progress in the proceedings and the irreparable effects that these delays could cause and were causing, to the detriment of L.M." In its communication, the Commission indicated that:

Based on the principle of the best interests of the child, it is appropriate to grant precautionary measures in the terms of Article 25(1) of [the Commission's] Rules of Procedure so as to ensure that the time factor does not become a determining element for the domestic courts, to the detriment to the rights of the child, L.M. Consequently it asks the Government to:

1. Take the necessary measures to ensure that the proceedings concerning the custody and care of the child L.M. are decided within three months, and
  2. To report on the steps taken to comply with this precautionary measure.
- e) On December 29, 2010, in response to the request for precautionary measures, the State confirmed the existence of the different domestic proceedings relating to this matter, and the fact that none had achieved a final ruling on the situation and custody of L.M., or on his contact with his biological nuclear or extended family.<sup>29</sup> In addition, it indicated that "since December this year (referring to 2010), most of the case files, with the exception of the criminal case file, are at the same court due to the joinder of actions and to assist the judge in examining them." In addition, "all the parties have taken advantage of the rights granted them by law, and have requested the judicial authorities to make different rulings, which has resulted in disqualifications, recusals, appeals, discontinuation of appeals, all of which are being decided at the request of the parties in the different proceedings," and that "these are following their normal procedural course";
- f) On February 22, 2011, the representatives of the possible beneficiary submitted additional information indicating that, in the last three months, the main custody file has been paralyzed because, owing to the recusals and disqualifications, it had not been possible to assemble three judges who accepted competence to decide the appeal filed against the judgment of October 19, 2010. In addition, they indicated that the contact proceedings initiated in November 2010 remained without a decision and that, in these proceedings, six judges from the children's and adolescents' jurisdiction had disqualified themselves, which had resulted in a delay "of around 40 days to begin processing the cases." They added that, in the proceedings to challenge the paternity of V.H.R., a DNA test had not been carried out, even though the latter had asked that it be conducted as soon as possible in order to end this litigation;
- g) On March 26, 2011, a working meeting was held at the seat of the Commission, attended by the petitioners and representatives of the proposed beneficiary, the State of Paraguay, and L.S., biological mother of L.M. At this meeting, the

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<sup>28</sup> Cf. Response of the State of Paraguay to the IACHR of August 23, 2010 (attachment 23 to the request for provisional measures submitted by the Commission).

<sup>29</sup> Cf. Brief of the State of Paraguay to the IACHR of December 29, 2010 (attachment 23 to the request for provisional measures submitted by the Commission).

petitioners reiterated that the precautionary measures ordered by the Commission had not been complied with, and underscored the absence of progress in the domestic proceedings. The State indicated that there had been delays in the judicial proceedings because the parties – petitioners and guardians – had taken advantage of the procedural guarantees provided by domestic law and, also, a series of children’s judges had disqualified themselves “for reasons attributed to each of the parties.”

4. The Commission’s arguments to support its request for provisional measures, including the following:
- a) From a preliminary assessment of the proceedings, there are, *prima facie*, a series of elements that, taken together, constitute a situation of extreme gravity that, to date, has been causing irreparable damages to the child L.M., namely:
    - i. One year and nine months have elapsed since the main proceeding for the custody of L.M. began, and to date no first instance decision has been taken regarding his situation. This proceeding has been almost paralyzed since October 2010, when an appeal was filed against the decision of October 19, 2010;
    - ii. The stalling of the proceeding has resulted, among other factors, from the impossibility of establishing an appeals court to decide the appeal, due to the judges disqualifying themselves;
    - iii. The legal time limits within which the State indicated these cases must be resolved expired a long time ago;
    - iv. There are other related proceedings in which the judges have also disqualified themselves, and other incidents that have prevented a final ruling;
    - v. the State has not adopted any measure to expedite the proceedings, and has not complied with the Commission’s precautionary measures;
  - b) In the said exceptional circumstances, in which the domestic authorities must take decisions on these aspects, the principle of special protection measures for children is closely related to the timeliness of the respective decisions. This exceptional diligence is due to the fact that the passage of time inevitably becomes a defining element for emotional ties that are difficult to undo without harming the child;
  - c) On several opportunities there have been unjustified delays in the proceedings and throughout the proceedings a number of the judicial authorities from the children and adolescents’ jurisdiction have disqualified themselves;
  - d) Despite the precautionary measures ordered by the Commission, which included a specific time frame to conclude the proceedings, the State has failed to adopt measures aimed at expediting the domestic proceedings;
  - e) The situation of delay and absence of decisions in the domestic proceedings entails a risk that is not only imminent but is also materializing, without any likelihood that the situation will change unless the mechanism of provisional measures is activated; and
  - f) The special celerity of the proceedings, their swift resolution, and the urgent decision concerning contact with the biological family, in addition to being

requirements under the Convention, analysis of which corresponds to the merits of the matter, become the means for the urgent protection and safeguard of L.M.'s rights, and the way to ensure that the measures of comprehensive restitution eventually recommended by the Commission or ordered by the Court can be truly effective.

5. The Secretariat's note of May 25, 2011, in which, based on Article 27(5) of the Rules of Procedure and on the instructions of the Court in plenary, the State was asked to submit, by June 6, 2011 at the latest, any observations it deemed pertinent, as well as any other relevant information and documentation. In this communication the State was asked to keep the identity of the child L.M. confidential.

6. The brief of June 9, 2011, in which the State responded to the request for observations (*supra* having seen paragraph 5) and indicated the following:

- a) The parties' right to file petitions before the authorities had been respected, and "it had acted with due diligence in all the proceedings, complying with the provisions of the Constitution and international treaties";
- b) The measures taken by the domestic authorities should be taken into account, as they reveal the State's interest and willingness to guarantee the comprehensive protection of the child L.M. The State, through its courts, has adopted all existing legal measures to resolve the disputes surrounding the child, respecting constitutional guarantees and due process;
- c) The seven proceedings concerning the child L.M. that are currently active must be studied and analyzed thoroughly, "because there are various differences of opinion that, if taken lightly, could cause significant harm to the child." The State referred specifically to the criminal proceeding opened for the offense of abandonment against L.S., "birth mother of the child L.M.," the investigative phase of which had concluded and the accusation against her had been filed by the Public Prosecutor's Office, with a request to hear the case in public oral proceedings. The preliminary hearing was set for June 7, 2011. It also mentioned the case challenging paternity, which was at the stage of receiving evidence;
- d) To ensure that "situations such as that of the child L.M. do not occur again," on May 23, 2011, the National Children and Adolescents Secretariat (SNNA) submitted a request for examination of a bill to amend Articles 7, 18 and 21 of Law 1136/97, Adoption Law.

7. The Secretariat's note of June 13, 2011, in which, on the instructions of the President, the Inter-American Commission was granted until June 16, 2011, to submit any observations it deemed pertinent.

8. The brief of June 16, 2011, in which the Commission submitted its observations on the State's report and argued that "it was abstract"; that it did not change in any way the grounds for the Commission's request for provisional measures but rather, to the contrary, it reflected the lack of celerity in the proceedings. In addition, the Commission argued that the report revealed that the State continued to give normal treatment to this matter, which "is characterized by the fact that the urgency does not derive from a threat of harm, whose appearance can be anticipated in the future, but from harm that is already being caused and the prospects of repairing it are inversely proportionate to the passage of time."

9. The brief of June 23, 2011, in which the Commission "expanded the [preceding] observations." It indicated that "the main custody case remains paralyzed owing to the

impossibility of establishing a court of appeal," and this "extends to the three cases on contact filed by different members of L.M.'s biological family, as well as the case on forfeit of parental authority, because decisions on an appeal are pending in all the cases." The Commission stated that this situation "reveals *prima facie* the inability of the institutions to provide a prompt response to disputes that, owing to the nature of the interests at stake and the grave damage that could be caused to the beneficiary, warrant exceptional diligence." In addition, it reported that, of the three DNA tests, it had only been possible to perform one, because the O-A family had not come forward with the child L.M. for the second test that had been ordered, and had appealed the decision ordering that the DNA tests be conducted by two specialized laboratories.

### CONSIDERING THAT:

1. Paraguay has been a State Party to the American Convention since August 24, 1989, and pursuant to Article 62 of the Convention, accepted the compulsory jurisdiction of the Court on March 11, 1993.
2. Article 63(2) of the American Convention establishes that "[i]n 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. According to Article 27 of the Court's Rules of Procedure:<sup>30</sup>
  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. This request for provisional measures does not arise from a case before the Court, but rather the measures have been requested within the framework of petition 1474/10 being processed by the Inter-American Commission since September 1, 2010, which is currently at the admissibility stage.
5. The Court has established that under international human rights law, provisional measures are not only preventive, in the sense that they preserve a juridical situation, but rather they are fundamentally protective, because they protect human rights insofar as they seek to avoid irreparable damage to persons.<sup>31</sup> The preventive nature of provisional

<sup>30</sup> Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2010.

<sup>31</sup> Cf. *Case of the "La Nación" Newspaper*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph; *Matter of the Aragua Detention Center "Tocorón Prison"*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2010, sixth considering paragraph; and *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of November 26, 2010, fifth considering paragraph.

measures relates to the context of international litigations. In this regard, the object and purpose of these measures is to preserve the rights potentially at risk until the dispute is settled, and to guarantee the integrity and effectiveness of the decision on merits, so as to prevent the violation of the rights in litigation, a situation which could make the final decision ineffective or impair its practical effects. Thus, provisional measures allow the State concerned to comply with the final decision and, if appropriate, to make the reparation ordered.<sup>32</sup> As regards the protective nature, the Court has indicated that, provided that the basic requirements are met, provisional measures become a real jurisdictional guarantee of a preventive nature, because they protect human rights insofar as they seek to prevent irreparable damage to persons.<sup>33</sup>

6. The three conditions that Article 63(2) of the Convention requires for the Court to be able to grant provisional measures must be present in any situation in which they are requested.<sup>34</sup> Based on its competence, in the context of provisional measures the Court may only consider those arguments directly related to the extreme gravity, urgency, and need to prevent irreparable damage to persons. Any other fact or argument may only be examined and decided during consideration of the merits of a contentious case.<sup>35</sup>

7. Regarding the requirement of "gravity," for purposes of the adoption of provisional measures, the Convention requires it to be "extreme"; in other words, at its highest or most intense level. The "urgent" nature implies that the risk or threat involved must be imminent, which also supposes that the response to remedy it must be immediate. Finally, with regard to the damage, there must be reasonable probability that it will be caused, and it must not involve legal rights or property that can be repaired.<sup>36</sup>

8. The Court observes that, from the information provided by the Commission and not opposed by the State with regard to the facts and background of this matter (*supra* having seen paragraph 2), it can be inferred that:

- a) The O-A family has currently and since November 10, 2009, provisional custody of the child L.M., aged one year and ten months, under a ruling by the Third Children and Adolescents Court of First Instance;

<sup>32</sup> Cf. *Matter of Belfort Istúriz et al.* Provisional measures with regard to Venezuela, Order of the Inter-American Court of Human Rights of April 15, 2010, sixth considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of May 28, 2010, tenth considering paragraph; *Matter of the Capital Judicial Detention Center El Rodeo I and El Rodeo II*. Provisional measures with regard to Venezuela, Order of the Inter-American Court of Human Rights of February 8, 2008, seventh considering paragraph; *Matter of the "El Nacional" and "Así es la Noticia" Newspapers*. Provisional measures with regard to Venezuela, Order of the Inter-American Court of Human Rights of November 25, 2008, twenty-third considering paragraph, and *Matter of Luis Uzcátegui*. Provisional measures with regard to Venezuela, Order of the Inter-American Court of Human Rights of January 27, 2009, nineteenth considering paragraph.

<sup>33</sup> Cf. *Matter of Luis Uzcátegui*, *supra* note 32, twentieth considering paragraph; *Matter of the Capital Judicial Detention Center El Rodeo I and El Rodeo II*, *supra* note 32, eighth considering paragraph; *Matter of the "El Nacional" and "Así es la Noticia" Newspapers*, *supra* note 31, twenty-fourth considering paragraph.

<sup>34</sup> Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph; *Matter of the Aragua Detention Center "Tocorón Prison," supra* note 31, eighth considering paragraph, and *Matter of Alvarado Reyes et al.*, *supra* note 31, thirty-seventh considering paragraph.

<sup>35</sup> Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 29, 1998, sixth considering paragraph; *Matter of Guerrero Larez*, Provisional measures with regard to Venezuela, Order of the Inter-American Court of Human Rights of November 17, 2009, sixteenth considering paragraph, and *Case of Rosendo Cantú et al.*, Provisional measures with regard to Mexico, Order of the Inter-American Court of Human Rights of February 2, 2010, fifteenth considering paragraph.

<sup>36</sup> Cf. *Matter of the Monagas Detention Center ("La Pica"); Capital Region Penitentiary Center Yare I and Yare II (Yare Prison); Occidental Region Penitentiary Center (Uribana Prison); Capital Detention Center El Rodeo I and El Rodeo II*. Provisional measures with regard to Venezuela. Order of the Court of November 24, 2009, third considering paragraph; *Matter of Belfort Istúriz et al.* *supra* note 31, eighth considering paragraph.

b) The preceding decision was adopted within the main proceeding concerning the custody of L.M., initiated on August 5, 2009 (almost since the child's birth). All those involved are participating in this proceeding. According to information provided by the State to the Commission, all the procedural norms that govern the children and adolescents jurisdiction establish summary proceedings, so that the first instance court has merely six days to deliver a ruling, and the courts of appeal have only 10 days in which to rule.<sup>37</sup> This case is paralyzed owing to the current apparent impossibility of establishing an appeals court.

c) On November 16, 2009, L.S. and V.H.R., apparently the biological mother and father, registered L.M. as their son with the Civil Registration Directorate General;

d) In November 2009 and February 2010, respectively, the O-A family filed two petitions against L.S. and V.H.R., namely: for forfeit of parental authority against the former and to challenge the paternity of the latter. In the second proceeding, the court ordered three DNA tests to confirm the biological relationship; only one of these had been performed (the results of which were not advised), because the O-A family has not come forward with the child for the second test and has filed an appeal against the decision expanding the evidence.

e) Since July 2010, a criminal proceeding has apparently been underway for "abandonment and other" offenses against V.H.R. and L.S., in which charges have been filed as well as a request to hear the case in a public oral proceeding.

f) In November 2010, members of the child's biological and "extended" family, in other words his father, mother and maternal grandparents, filed petitions requesting custody of the child, and a "provisional contact regime" with him, in three judicial proceedings, which have not been decided;

g) Seven domestic judicial proceedings are underway in relation to the matter of the child L.M., and no final decision has been reached in any of them. In several of these proceedings there have been a number of disqualifications and recusals of the judges from the children and adolescents jurisdiction, whose turn it was to hear the case, and this has caused major delays.

9. The Court observes that the child L.M. is in the provisional custody of a family that, when custody was granted, was taking steps to adopt a child. Thus, since the birth of the child L.M. – who is almost two years old – he has been separated from his biological family, without, currently, having any type of contact with the alleged family members; in other words, in the terms used in the request for provisional measures, with his biological "nuclear" and "extended" family. This is occurring because no final judgment has been handed down in the said proceedings and owing to the alleged lack of response by the domestic courts to the specific requests for custody and for a "contact regime" that would allow the child and his family of origin to maintain a relationship through a visiting regime.

10. Regarding this failure to "decide the proceedings," the State indicated that this was not due "to the indifference of the domestic courts, but rather to compliance with the current laws, which are in keeping with the international treaties signed by the Republic of Paraguay." Although it is not incumbent on the Court, within the framework of a request for provisional measures, to assess the compatibility of the laws of Paraguay with the Convention or other treaties, it is relevant that the State submitted as an attachment to its

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<sup>37</sup> Cf. Response of the State of Paraguay to the IACHR of August 23, 2010 (attachment 13 to the request for provisional measures submitted by the Commission).

observations a bill to amend several articles of the Adoption Law as an “example of steps taken by the State to prevent the repetition of situations such as that of the child L.M.”

11. Thus, the explanatory statement for the bill presented by the State indicates that the current Adoption Law “gives rise to a situation that enables the custody of children not yet declared available for adoption to be granted to families with clear intentions to adopt, omitting the technical procedures relating to the maintenance of the ties between the child and his or her biological family, without having exhausted the mechanisms for maintaining the biological ties and, in most cases, giving priority to using adoption as a first measure rather than as an exceptional measure.” In this regard, the text adds that “the possibility granted by the Law [...] to families awarded custody to be able to adopt children after custody has been in effect for two years, tacitly gave rise to the appearance of a mechanism known as pre-adoption custody [which is] incompatible with the comprehensive protection doctrine, because it does not respect the child’s right and best interest to live with his or her family of origin as a first measure, in which the child and its family receive sufficient support to strengthen and maintain the original ties.” The text continues, by indicating that, “[c]ompletely to the contrary, the concept of pre-adoption custody is used in a discretionary manner as an abbreviated method to obtain and legitimize irregular situations very closely related to the sale and trafficking of boys, girls, and adolescents; this is clearly revealed by the statistics of the Adoption Center, which show that, in 2010, 82% of the adoption judgments were granted based on pre-adoption custody.” The explanatory statement concludes by indicating that, in view of the description of the background facts relating to the jurisdictional and administrative procedures that establish the mechanism of pre-adoption custody, in clear violation of the best interest of the child, the comprehensive protection doctrine, and the specific functions of the Adoption Center, the jurisdictional legal framework must be amended.”

12. In the instant matter, as the Commission has indicated, “the main point of the request is that no decision has been reached in any of the cases regarding the custody and care of L.M., and no decision has been reached regarding the biological relationship with his nuclear and/or extended family.” In other words, “his custody and care situation remains unresolved, while the requests that seek to establish contacts with his biological family remain undecided.” Consequently, the Commission argues that this “series of elements constitutes a situation of extreme gravity that may affect, irreparably, the proposed beneficiary’s rights to identity, mental integrity, and to a family” and, consequently, requests the State to “expedite the domestic proceedings and decisions regarding L.M.’s best interest, including, as soon as possible, the required decisions on his contact with his biological family.”

13. The Court does not have to rule on whether the different proceedings in the domestic sphere are being processed in keeping with the American Convention, or in accordance with the special obligations of protection for children and adolescents. If appropriate, these aspects could be debated in the context of the petition filed before the Inter-American Commission. In this matter, the Court is only called on to determine whether the proposed beneficiary is in a situation of extreme gravity and urgency that responds to the need to prevent irreparable damage. The request presented in favor of L.M. intends to protect his rights to mental integrity, identity, and a family.

14. Regarding the right to protection of the child’s family, recognized in Article 17 of the American Convention, the Court has underscored that this means that the State is obliged not only to establish and directly execute measures for the protection of children, in accordance with Article 19 of the Convention, but also to encourage, in the broadest possible way, the development and strength of the family unit.<sup>38</sup> Consequently, the

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<sup>38</sup> Cf. *Juridical Status and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 of September 17,

separation of children from their family may constitute, in certain circumstances, a violation of the said right to protection of the family,<sup>39</sup> as even the legal separation of a child from his or her biological family is only applicable when duly justified in the best interest of the child, and is exceptional and, insofar as possible, temporary.<sup>40</sup> In addition, given that during early childhood children exercise their rights through their next of kin,<sup>41</sup> and that the family plays an essential role in their development,<sup>42</sup> the separation of a minor from his biological parents may affect his right to personal integrity, contained in Article 5(1) of the Convention, insofar as it may jeopardize his or her development.<sup>43</sup>

15. In relation to the right to identity, the Court has indicated, quoting the Inter-American Juridical Committee,<sup>44</sup> that “it is a fundamental right” that “can be conceptualized, in general, as the series of attributes and characteristics that allow the individualization of a person in society and, in this regard, it comprises several other rights included in the Convention, according to the subject of rights in question and the circumstances of the case.”<sup>45</sup> Thus, with regard to boys, girls, and adolescents, based on the provisions of Article 8 of the Convention on the Rights of the Child, the right to identity comprises, among other matters, the right to family relationships.<sup>46</sup>

16. Due precisely due to the foregoing, and in view of the importance of the interests at stake, the right to physical integrity, the right to identity, and the right to the protection of the family, the administrative and judicial proceedings relating to the protection of the human rights of the child, particularly those judicial proceedings concerning the adoption, guardianship and custody of boys and girls in early childhood, must be handled by the authorities with exceptional diligence and celerity.<sup>47</sup> The foregoing reveals a need to defend

2003. Series A No. 18, para. 66; *Case of the Serrano Cruz Sisters v. El Salvador*. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120, para. 141; *Case of Chitay Nech et al. v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of May 25, 2010. Series C No. 212, para. 157, and *Case of Gelman v. Uruguay*. Merits and reparations. Judgment of February 24, 2011. Series C No. 221, para. 125.

<sup>39</sup> Cf. Advisory Opinion OC-17, *supra* note 38, paras. 71 and 72 and *Case of Gelman v. Uruguay*, *supra* note 38, para. 125.

<sup>40</sup> Cf. Advisory Opinion OC-17, *supra* note 131, para. 77. Inter-American Court, *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 125.

<sup>41</sup> Cf. *Case of Gelman Vs. Uruguay*, *supra* note 38, para. 129.

<sup>42</sup> Cf. *Case of Gelman v. Uruguay*, *supra* note 38, paras. 66 and 71 and Advisory Opinion OC-17, *supra* note 38, paras. 53, 66 and 71. Similarly, Article 16 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador” establishes that “[e]very child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother.”

<sup>43</sup> Cf. ECHR, *Case of Mikulić v. Croatia* No. 53176/99, February 7, 2002, para. 53; *Case of Botta v. Italy* No. 153/1996/772/973, 24 February 1998, para. 32, *mutatis mutandis*; Committee on the Rights of the Child. General Comment No. 7: Implementing child rights in early childhood. Fortieth session, U.N. Doc. CRC/C/GC/7/Rev.1, 20 September 2006, paras. 6(b), 10, 16, 18 and 36(b); United Nations, General Assembly, Declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally, Resolution 41/85 of 3 December 1986, article 2.

<sup>44</sup> Cf. Inter-American Juridical Committee, Opinion “on the scope of the right to identity,” resolution CJI/doc. 276/07 rev. 1, of August 10, 2007, para. 12, ratified by resolution CJI/RES.137 (LXXI-O/07) of August 10, 2010.

<sup>45</sup> Cf. *Case of Gelman*, *supra* note 38, para. 122.

<sup>46</sup> Cf. *Case of Gelman*, *supra* note 38, para. 122.

<sup>47</sup> Cf. United Nations, Human Rights Committee, Communication No. 1407/2005, 24 April 2009, CCPR/C/95/D/1407/2005, para. 7.3; Declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally, article 15; Committee on the Rights of the Child, General Comment No. 5: General measures for application of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003, para. 24; ECHR, *Case of Laino v. Italy* No. 33158/96, 18 February 1999, para. 18; *Case of Monory v. Romania and Hungary*, No. 71099/01, 5 April 2005, para. 82; *Case of H v. United Kingdom* No. 9580/81, 8 July 1987, para. 85; *Case of Paulsen-Medalen and*

and to protect the best interest of the child, as well as to guarantee the rights that are potentially at risk until the dispute on merits has been resolved, and to ensure the practical effects of the decision eventually adopted.

17. As indicated, the child L.M. is currently almost 2 years old, and the proceedings concerning his guardianship, custody, parental authority, paternity, and family contact, are still being processed. The State attributes this length of time to the due observance by the domestic courts of domestic law and, indeed, when annulling the decision of the first instance judge that had ordered the restitution of the child to his biological father, the Children and Adolescents Court of Appeal found that a series of proceedings existed that needed to be conducted simultaneously, since their effects were interrelated (*supra* having seen paragraph 2(o)). It is worth noting that, also and notwithstanding the decision, the Court of Appeal itself indicated that the court appointed to hear the case could establish an interim measure of contact with the biological family.<sup>48</sup> In addition, the domestic courts have received several technical reports, mainly from the Adoption Center of the Children and Adolescents Secretariat of the Ministry of Justice, recommending that the child L.M. not be separated from his family of origin.<sup>49</sup>

18. Based on the above, the mere passage of time may be a factor that favors the creation of ties with the foster family,<sup>50</sup> which, in an eventual decision regarding the rights of the child, may become the main grounds for not changing the child's actual situation,<sup>51</sup> principally because the risk of seriously affecting the child's emotional and psychological balance increases.<sup>52</sup> In other words, the passage of time would inevitably constitute a

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*Svensson v. Sweden* No. 149/1996/770/967, 19 February 1998, paras. 39 and 42; *Case of V.A.M. v. Serbia*, No. 39177/05, 13 March 2007, paras. 99 and 101; Council of Europe, recommendation No. R(91)9, on emergency measures in family matters, 9 September 1991, principle 3.1, 3.4, and 3.5; European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, 20 May 1980, article 5; European Convention on the Exercise of Children's Rights, 25 January 1996, article 7 – "Duty to act speedily"; "Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice" adopted by the Committee of Ministers on 17 November 2010, principles 50 and 51, "Avoiding undue delay" and, *mutatis mutandi*, United Nations, Human Rights Committee, *Mónaco et al. v. Argentina*, A/50/40 vol. II, 3 April 1995, CCPR/C/53/D/400/1990, para 10.5.

<sup>48</sup> Cf. Decision of the Children and Adolescents Court of Appeal of August 18, 2010 (attachment 15 to the request for provisional measures submitted by the Commission).

<sup>49</sup> In the first report, the Adoption Center observed that, given that "the biological parents ha[d] been found and that there [were] possibilities of reinsertion, [...] it was not appropriate at th[at] time to transfer the child from a foster family to a family with the intention of adopting." Similarly, in November 2010, reports were issued indicating the pertinence of L.M. being reinserted into his biological family and, in March 2011, the same institution presented the "Report on the psychosocial and legal aspects of maintaining the relationship" in the context of the main custody proceeding, in which it was considered "desirable for the court to [...] [r]evoke the provisional custody of the child [L.M.] granted to O.O.Z. and E.A.P. [and] to order the family reinsertion of the child [L.M.] with his maternal grandparents [...] or with the biological father V.R., or the biological mother L.S., who are able to assume responsibility for raising and taking care of the child, mainly because the actual family group encourages mutual help and shared responsibilities." Cf. Report of the Adoption Center of November 12, 2009, attachment 6 to the petition (attachment 8 to the request for provisional measures submitted by the Commission); Report of the Technical Team of the Children and Adolescents Secretariat of November 20, 2009 (attachment 9 to the request for provisional measures submitted by the Commission); Report of the Adoption Center of November 24, 2009, and Report of the *Corazones por la Infancia* Foundation of November 25, 2009. See also, Brief of the State of Paraguay to the IACHR of September 21, 2010 (attachment 16 to the request for provisional measures submitted by the Commission), and Report on the psychosocial and legal aspects of maintaining the relationship issued by the Adoption Center, dated March 10, 2011 (attachment 25 to the request for provisional measures submitted by the Commission).

<sup>50</sup> Cf. United Nations, Committee on the Rights of the Child, General Comment No. 7: Implementing child rights in early childhood, fortieth session, U.N. Doc. CRC/C/GC/7/Rev.1, 20 September 2006, paras. 16 and 18, and *mutatis mutandis*, ECHR, *Case of Clemeno and others v. Italy*, No 19537/03, 21 October 2008, paras. 53 and 60.

<sup>51</sup> Cf. ECHR, *Case of H*, *supra* note 47, para. 89.

<sup>52</sup> Cf. ECHR, *Case of Sommerfeld*, *supra* note 43, paras. 65, 88 and 90 and *Case of Mikulić*, *supra* note 43, para. 53

defining element of ties of affection that would be hard to revert without causing damage to the child. This situation entails a risk that is not only imminent but may already be occurring. Consequently, greater delays in the proceedings, irrespective of any decision on the determination of his rights, may determine the irreversible<sup>53</sup> or irreparable<sup>54</sup> nature of the actual situation, and render invalid and detrimental to the interests of the child L.M. any decision to the contrary.<sup>55</sup>

19. Therefore, although it is not applicable to order, as the Commission has requested, the acceleration of the domestic proceedings, since the analysis of the rapidity and effectiveness of the proceedings concerning the facts that give rise to the request for provisional measures corresponds to the examination of the merits of the case,<sup>56</sup> the Court observes that the delay or lack of response may imply an irreparable damage to the rights to psychological integrity, identity, and protection of the family of the child L.M.. Therefore, while the judicial proceedings to define his legal situation are resolved, the Court deems it pertinent to order, as a provisional measure to prevent the child's rights being affected, that the State take the necessary, adequate, and effective measures to allow him to maintain contact with his family of origin,<sup>57</sup> with the support of appropriate professional personnel to monitor the child's emotional condition.<sup>58</sup> In this regard, this Court recalls that the Court of Appeal itself established that an interim measure could be established for contact with the biological family, without this entailing anticipating a decision in relation to the proceedings underway concerning the child L.M.; in other words, without broaching the merits of those proceedings.

20. In addition, the State must take the pertinent measures to ensure that the provisional measures required in this order are planned and implemented with the participation of the beneficiary's representatives, the respective members of his biological family, and when appropriate, of the family with custody, so that the said measures are adopted diligently and effectively.

21. Consequently, noting that the Inter-American Commission received the request for precautionary measures on June 17, 2010, and that petition 1474/10, received on September 1, 2010, is at the admissibility stage, the Court considers that the Inter-American Commission should decide on the petition as promptly as possible, based on the urgency alleged in the request for provisional measures.<sup>59</sup>

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<sup>53</sup> Cf. ECHR, *Case of H*, *supra* note 51, paras. 85 and 89, and *B. v. The United Kingdom*, No. 9840/82, of 8 July 1987, para. 63.

<sup>54</sup> Cf. ECHR, *Case of V.A.M.*, *supra* note 47, para. 134, and *Case of Monory*, *supra* note 47, para. 82.

<sup>55</sup> Cf. ECHR, *Case of Sommerfeld*, *supra* note 43, paras. 65, 88 and 90; *mutatis mutandis Case of Monory*, *supra* note 47, para. 82, and *Case of H*, *supra* note 51, para. 85.

<sup>56</sup> Cf. *Matter of Leonel Rivero et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of November 25, 2008, eighteenth considering paragraph; *Matter of Pilar Noriega et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of February 6, 2008, fourteenth considering paragraph; *Matter of Liliana Ortega et al.* with regard to Venezuela, Order of the Inter-American Court of Human Rights of July 9, 2009, seventeenth and forty-first considering paragraphs.

<sup>57</sup> Cf. Advisory Opinion OC-17, *supra* note 38, para. 72; Convention on the Rights of the Child, adopted and open to signature and ratification by the General Assembly in resolution 44/25, of 20 November 1989, article 9.3; Council of Europe, European Convention on the Legal Status of Children Born out of Wedlock, 15 October 1975, article 8, and Council of Europe, Convention on Contact concerning Children, 15 May 2003, article 4.1.

<sup>58</sup> Cf. Advisory Opinion OC-17, *supra* note 38, para. 78; Council of Europe, Convention on Contact concerning Children, May 15, 2003, article 4.3; Council of Europe. "Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice," *supra* note 47, "general elements of child friendly justice," 1.k and 11.

<sup>59</sup> Cf. *Matter of the Four Ngöbe Indigenous Communities and their members v. Panama*, Order of the Inter-American Court of Human Rights of May 28, 2010, sixteenth considering paragraph; *Matter of Wong Ho Wing*.

22. The adoption of urgent or provisional measures does not imply a decision on the merits of the case if it were to be considered by the Court, nor does it prejudge the State's responsibility for the reported facts.<sup>60</sup>

**THEREFORE:**

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

in exercise of the authority granted by Article 63(2) of the American Convention and 27 of its Rules of Procedure,

**DECIDES:**

1. To require the State of Paraguay to adopt forthwith the measures necessary, adequate, and effective to protect the rights to personal integrity, identity, and protection of the family of the child L.M., allowing him to be in contact with his family of origin, with the support of appropriate professional personnel to monitor the child's emotional condition, as established in considering paragraphs 16 and 18 to 20 of this order.
2. To require the State to report to the Inter-American Court, by August 20, 2011, at the latest, on the provisions of the first operative paragraph of this Order.
3. To require the representatives of the beneficiary and the Inter-American Commission to submit to the Inter-American Court, within two and four weeks, respectively, any observations they deem pertinent on the report mentioned in the second operative paragraph of this order.
4. To require the State, also, to report to the Inter-American Court every two months as of August 20, 2011, on the provisional measures adopted in accordance with this decision.
5. To request the representatives of the beneficiary and the Inter-American Commission to submit their observations within four and six weeks, respectively, of notification of the reports of the State indicated in the fourth operative paragraph.
6. To require the Secretariat to notify this order to the State and the Inter-American Commission and, through the latter, to the representatives of the beneficiary.

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Provisional measures with regard to Peru, Order of the Inter-American Court of Human Rights of May 28, 2010, fifteenth considering paragraph.

<sup>60</sup> Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the President of the Inter-American Court of Human Rights of July 13, 1998, sixth considering paragraph; *Case of Rosendo Cantú et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of February 2, 2010, sixteenth considering paragraph, *Matter of Alvarado Reyes et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, sixteenth considering paragraph; and *Matter of María Lourdes Afiuni.* Provisional measures with regard to Venezuela, Order of the Inter-American Court of Human Rights of December 10, 2010, para. 14.

Diego García Sayán  
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García Sayán  
President

Pablo Saavedra Alessandri  
Secretary