

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JANUARY 20, 2012**

**PROVISIONAL MEASURES
REGARDING THE DOMINICAN REPUBLIC**

MATTER OF JUAN ALMONTE HERRERA *ET AL.*

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", "the Court" or the "Tribunal") on May 25, 2010.
2. The briefs of the Dominican Republic (hereinafter, the "State") of September 10 and 18 and December 7, 2010; March 17, April 13 and 25, May 23, August 27 and November 24, 2011, by means of which it presented information related to the implementation of the provisional measures ordered by the Court.
3. The briefs of the representatives of the beneficiaries of the provisional measures (hereinafter, the "representatives") of November 26, 2010, April 12 and 20, 2011, by means of which they forwarded their observations to the implementation of said provisional measures.
4. The briefs of the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "Commission") of October 26, 2010; February 18, June 2 and July 20, 2011, by means of which it forwarded its observations to the implementation of said provisional measures. Moreover, the communication of January 20, 2012, by means of which the Commission informed that "it had not received an individual petition related to [the] matter in question".

CONSIDERING THAT:

1. The Dominican Republic has been a State Party to the American Convention since April 19, 1978 and, in accordance with Article 62 thereof, has accepted the binding jurisdiction of the Court on March 25, 1999.

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 the provision established in Article 63(2) of the Convention, provisional measures ordered by this Tribunal are binding on the State in conformity to a basic principle of international law, as supported by international case law, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*).¹

4. According to the International Human Rights Law, the provisional measures are not only precautionary in the sense that they preserve a legal situation, but they are also mainly protective since they protect human rights, insofar as they avoid irreparable damage to people. Provisional measures are adopted provided the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met. In this sense, provisional measures become a real jurisdictional guarantee of a preventive nature.²

5. By reason of its competence, within the framework of provisional measures, it falls upon the Court to consider only those arguments which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons. Such other fact or argument can only be analyzed and decided during the consideration of the merits of a contentious case.³

6. According to the Court’s Order of May 25, 2010, the State must, *inter alia*, adopt the measures necessary to protect the life, liberty and personal integrity of Mr. Juan Almonte Herrera and the life and integrity of Mr. Yuverky Almonte Herrera, Joel Almonte, Genaro Rincón and Francisco de León Herrera, as well as Ms. Ana Josefa Montilla, if she decides to return to the Dominican Republic (*supra* Having Seen clause 1).

7. Regarding the measures necessary to protect the life, liberty and personal integrity of Mr. Juan Almonte Herrera, who has been missing since September 28, 2009, date on which, according to the representatives of the beneficiaries, he was detained by the National Police and had had no contact with his next-of-kin and representatives⁴, the State informed that “Mr. Almonte Herrera is a fugitive”, therefore it ordered the Central Director of Criminal Investigations [of the National Police] to conduct the corresponding investigations in relation to [his] disappearance”. Moreover, it pointed out that the

¹ See *Matter of James et al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998; Considering clause six; and *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic.* Provisional Measures regarding the Dominican Republic. Order of the Inter-American Court of Human Rights of December 1, 2011; Considering clause three.

² See *Case of “La Nación” Newspaper.* Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001; Considering clause four; and *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic;* *supra* note 1, Considering clause four.

³ See *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 clause six; and *Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic;* *supra* note 1, Considering clause six.

⁴ See *Matter of Almonte Herrera.* Provisional Measures regarding the Dominican Republic. Order of the Inter-American Court of Human Rights of May 25, 2010, Considering Clause seven.

entities in charge of the investigations had conducted the following proceedings in order to determine his whereabouts and punish the possible responsible for his disappearance: a) have made contact with the next-of-kin of Mr. Almonte Herrera; b) have searched for him in the entire national territory; c) have monitored the individuals' entrance to and exit from the country; d) have ordered the performance of autopsies to verify whether the possible remains of Mr. Almonte were undeclared at the morgue or some medical center; and e) have made inquiries within the National Police. In addition, the State forwarded a certificate indicating that the General Directorate of Prisons "does not [keep] any record showing that he is confined in one of the prisons centers under [its] control".

8. As to Mr. Yuverky Almonte Herrera and Joel Almonte, relatives of Mr. Juan Almonte Herrera, as well as Mr. Genaro Rincón and Francisco de León Herrera, lawyers, the State informed that "the beneficiaries were provided with the security so requested" by the Office of the Chief of the National Police. Likewise, it indicated that "since the measures have been adopted, there has occurred no event putting the integrity of the beneficiaries at risk". As to Ms. Ana Josefa Montilla, relative of Mr. Almonte, she is not currently in the Dominican Republic.

9. The representatives sustained that the Dominican State has not complied with the implementation of the provisional measures given that it has not established the whereabouts of Mr. Almonte Herrera. Moreover, they pointed out that neither the lawyers nor relatives of Mr. Almonte Herrera had been contacted by the State for the implementation of the provisional measures, except for two interviews conducted before the Attorney General's Office. Furthermore, they expressed their disagreement with the security measures being implemented by the National Police, since it should be performed by a multidisciplinary team. Finally, they pointed out that the efforts of the Public Prosecutors' Office to shed light on the case and bring charges against the alleged perpetrators and participants had not been enough. Regarding the situation of risk, they pointed out that as of July 2011, the situation had not changed, "given that their telephones were still tapped, [they] feel threatened and they also live with great uncertainty [because they] continue requesting justice be done and to establish the whereabouts of Juan Almonte and keep requesting the State to identify those responsible [...] and bring [them] before a court of law". As to Ms. Ana Josefa Montilla, they indicated that "despite she lives outside the Dominican [R]epublic, [...] whenever she enters the country, her telephones are tapped and she keeps being under strict surveillance", which places her "in a situation of constant fear and tension".

10. The Inter-American Commission pointed out that "the State's response does not satisfy the gravity and urgency of the situation" given that it did not submit specific information regarding the actions being taken to find Juan Almonte Herrera, or the investigations conducted to shed light on the circumstances in which he would have disappeared and to identify and punish those responsible for his disappearance, considering "there are conclusive evidence of the alleged participation of state agents in the facts". In this respect, it indicated that the passage of time without the adoption of serious measures of investigation and search increases the extreme risk in which the beneficiary may be and could result in irreparable damage for him. Moreover, it noted there are contradictions between the allegations submitted by the State and the representatives regarding the existence of measures to provide security and protection to the other beneficiaries, given that the State did not forward documentary evidence in relation to the protective measures that it claimed it had been implementing. In this respect, the Commission sustained that, according to the characteristics of this matter,

the people assigned to the protection of the beneficiaries should not be related to the National Police.

11. From the information furnished by the parties, it springs that Mr. Juan Almonte Herrera has been disappeared since September 28, 2009, and that the State has not established his whereabouts. Moreover, the Court notes that the State has not presented detailed and complete information regarding the measures effectively adopted to protect the life and integrity of all the beneficiaries. Specially, the State made no reference to the manner in which it would be providing the security service to the beneficiaries and did not furnish documentation that would allow the Tribunal to verify this information. Moreover, there is a discrepancy between the parties as to the implementation of the protective measures. In view of the above and the time elapsed since the granting of these provisional measures, this Presidency deems appropriate to receive, at a public hearing to be held during the next Ordinary Period of Sessions of the Tribunal, updated and detailed information on the status of implementation of these provisional measures and the arguments of the State, the representatives and the Inter-American Commission on the possible persistence of the situation of extreme gravity and urgency that gave rise to the adoption of said measures in favor of the beneficiaries, in order to evaluate the need to maintain the measures in force.

THEREFORE:

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

By virtue of the authority granted by article 63.2 of the American Convention on Human Rights, articles 24.1 and 25.2 of the Statutes of the Court and articles 4, 15.1, 27.2, 27.9 and 31.2 of the Tribunal's Rules of Procedure⁵,

DECIDES:

1. To convene the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these provisional measures and the Dominican Republic, to a public hearing to be held at the seat of the Inter-American Court of Human Rights on February 23, 2012, from 3.00 p.m. to 4.30 p.m., in order for the Tribunal to receive information and observations regarding the provisional measures ordered in this matter.
2. To require the Secretariat of the Court to notify this Order to the Dominican Republic, the Inter-American Commission on Human Rights and the representatives of the beneficiaries of the provisional measures.

⁵ Rules of Procedure of the Court approved during its LXXXV Period of Ordinary Sessions, held from November 16 to 28, 2009.

Diego García-Sayán
President

Emilia Segares Rodríguez
Deputy Secretary

So ordered,

Diego García-Sayán
President

Emilia Segares Rodríguez
Deputy Secretary