

**ORDER OF THE PRESIDENT
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF JANUARY 23, 2012

**PROVISIONAL MEASURES
REGARDING THE REPUBLIC OF PARAGUAY**

MATTER OF L.M.¹

HAVING SEEN:

1. The Order rendered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on July 1, 2011, wherein the Court decided to:

1. Require the State of Paraguay to adopt forthwith the necessary, adequate, and effective measures 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 [...].

2. 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 [the] Order.

3. 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 [the] Order.

4. 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 [that] decision.

5. 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.

[...]

¹ 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." Moreover, 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 "guardians " or "the family with custody."

2. The brief of August 25, 2011, wherein the representatives of the beneficiary of the provisional measures (hereinafter "the representatives") expressed that, "despite the fact that the deadline established by the Court had been lapsed at great length, the State has still not implemented any specific and effective measure that could be interpreted – at least – as an initial step regarding the mentioned Order of the Court."
3. The brief of August 26, 2011, wherein the Republic of Paraguay (hereinafter "the State" or "Paraguay") reported that the Ombudsman's Office for Children and Adolescents had been assigned to ensure the implementation of the provisional measures.
4. The brief of August 29, 2011, wherein the representatives presented information on the implementation of the provisional measures.
5. The note of August 29, 2011, of the Secretariat of the Inter-American Court (hereinafter "the Secretariat"), wherein, given that the brief presented (*supra* para. 3) did not contain more information on the measures that had been adopted, and given that the deadline for the presentation of the first report on implementation of the measures had lapsed, the State was required to file a complete and detailed report where it was also required to make reference to that which was reported by the representatives.
6. The brief of September 16, 2011, wherein the representatives expressed, *inter alia*, that "the State is not complying with the measure ordered as the State has not carried out the visitation schedule between the child L.M. and his extended family of origin."
7. The note of September 20, 2011, of the Secretariat, wherein the State was told once again that due to the lack of greater information from what has been presented thus far regarding the adopted measures and given that the deadline to present the first report had lapsed, the Court reiterated its request for the State to present a report.
8. The brief of October 3, 2011, wherein the representatives provided information regarding the implementation of the measures.
9. The note of October 3, 2011, of the Secretariat, wherein it once again told the State that the deadline to present its first report had lapsed, and it reiterated its request for said report to be presented. Moreover, it reminded the State that the timely and periodic presentation of information on the effective implementation of the provisional measures ordered by this Court constitutes an obligation of the State and that the timely observance of this obligation is fundamental to monitoring the status of the implementation. Moreover, it was noted that pursuant to Article 27(9) of the Rules of Procedure of the Court, "the Commission, the beneficiaries of the measures, or their representatives, and the State could be summoned to a public or private hearing regarding the provisional measures."
10. The brief of October 13, 2011, wherein the State expressed that on September 27th "the first reunion between the boy L.M. and his maternal grandparents had taken place."
11. The brief of November 30, 2011, and its annexes, wherein the State expressed, by way of its Embassy in Costa Rica, that "it has complied with the measure requested" in the matter through resolutions of the Court for Children and Adolescents and of the Appeals Court for Children and Adolescents.

12. The brief of November 21, 2011, and its annexes, wherein the representatives referred to the implementation of the provisional measures and requested that the Court summon the parties to a hearing on the matter.

13. The note of the Secretariat of December 7, 2011, wherein it provided the Commission and the representatives with the briefs of the State and recorded that it did not receive the annexes to the State's report of October 13, 2011.

14. The brief of December 13, 2011, wherein the Inter-American Commission referred to the implementation of the measures, reported that it had rendered an Admissibility Report on the case related to this matter, and requested that the Court summon a hearing.

15. The brief of January 9, 2012, wherein the representatives presented their observations to the reports of the State of October 13 and November 8, 2011.

CONSIDERING THAT:

1. Paraguay has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention") since August 24, 1989, and accepted the compulsory jurisdiction of the Court on March 11, 1993.

2. Article 63(2) of the American Convention states 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 Rules of Procedure of the Court (hereinafter "the Rules of Procedure")² establishes, where relevant, that:

[...]

The Court, or its Presidency if the Court is not sitting, may convene the Commission, the beneficiaries of the measures or their representatives, and the State to a public or private hearing on provisional measures.

4. The regulation established in Article 63(2) of the Convention confers an obligatory character to the adoption, by the State, of the provisional measures that this Tribunal orders, since the basic principle of the law of international responsibility of the State, supported by international jurisprudence, notes that States must comply with their obligations under the Convention in good faith (*pacta sunt servanda*).³

² Rules of Procedure of the Court approved in its LXXXV Regular Period of Sessions, held on November 16 to 28, 2009.

³ Cf. *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 6 and *Matter of Haitians and Dominicans of*

5. In relation to the situation of the child L.M., the State and the representatives reported the following:

a) On August 2, 2011, the Supreme Court of Justice of Paraguay issued a resolution addressed to the Ombudsman for Children and Adolescents, wherein it ordered that all the necessary measures be implemented in order that the provisional measure of the Inter-American Court be satisfied;

b) On August 23, 2011, the Ombudsman for Children and Adolescents requested that the Courts of First Instance for Children and Adolescents implement the provisional measures ordered by the Inter-American Court of Human Rights and confirmed by the Supreme Court;

c) on that same date, the judge of the court of first instance in charge of the processing of matter, summoned the parents, maternal grandparents, and the guardians of child L.M. to a hearing for August 31st, in order for them to appear and be heard. A psychologist and social worker were also summoned, both of the judiciary;

d) on that same day, the attorney for couple O-A challenged the presiding judge, filed an action for annulment of the actions, and requested the suspension of the set hearing;

e) on August 31, 2011, all those summoned appeared in court, except the couple O-A, guardians of child L.M. The hearing was held, and at the end of the hearing, immediate compliance was ordered with the operative provisions ordered by the Inter-American Court in its Order of July 1, 2011, as well as establishment of a temporary visitation schedule with the extended family (maternal grandparents) as of September 6, 2011;

f) on September 5, 2011, couple O-A once again filed an action for annulment and an appeal against the decision of August 31st, considering that the "procedural actions subject to appeal are null as they were declared in violation of the rules of due process" and in contravention with the legal provisions that require the mandatory and ineludible presence of the representatives of the child in proceedings of this nature;

g) on September 6, 2011, the day the first encounter should have taken place among the maternal grandparents and child L.M., the guardians did not appear in the place established for the reunion, to which the visitation ordered in the judicial ruling of August 31st;

h) on September 27, 2011, the first meeting between child L.M. and his grandparents took place, in the presence of a forensic psychologist and a social worker, in compliance with that established in the resolution of September 31, 2011.

i) since then, other visits have taken place between the child and his maternal grandparents and requests to expand the visitation schedule to other members of the biological family of the child have been rejected.

6. The representatives noted that the encounter constitutes "a first step in the implementation of the provisional measures" but that it "is not in any respects effective compliance," in that the measure involves an "isolated encounter between the boy and his

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 3.

maternal grandparents,” and that this has not “yet been [...] regulated [...].” They added that “it is important to highlight that the provisional measure has not yet been met, since the schedule has not been made effective between child L.M. and his [biological] parents.” With regard to the judicial resolution of August 31, 2011, they considered that “the measure ordered by the judge has led to weekly encounters between child L.M. and his maternal grandparents, without mention of the possibility of expanding the visits to the parents, which thereby does not satisfy compliance with the provisional measure.” Moreover, the representatives considered that, in general terms, there has not been effective compliance with that ordered by the Court and they have requested the Court to summon the parties to a hearing.

7. The President values the measures to implement the measures ordered in favor of child L.M. carried out by the domestic authorities, but also notes that the information that the State has provided is incomplete.

8. Moreover, the President states that encounters have taken place between child L.M. and his maternal grandparents as of September 27, 2011. While the State has expressed that it is complying with the provisional measure ordered, the Commission and the representatives have expressed that child L.M. has not yet had contact with his biological parents, and there is no clarity with respect to the modality of the measures regarding visitation.

9. It is important to recall what the Court stated in the mentioned order, that “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.”⁴

10. The President deems it necessary for the Court to receive, in a private hearing, up-to-date information from the State, the Inter-American Commission, and the representatives, on the status and prospects of the implementation of the provisional measures ordered in the Order of the Court of July 1, 2011.

THEREFORE:

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

in exercise of the authority granted by Article 63(2) of the American Convention on Human Rights, and Articles 4, 15(1), 27(2), 27(9), and 31(2) of the Rules of Procedure of the Court,

DECIDES TO:

⁴ *Matter of L.M.* Provisional Measures regarding Paraguay. Order of the Inter-American Court of Human Rights of July 1, 2011. Considerand clause 16.

1. Summon to the Inter-American Court of Human Rights the representatives of the beneficiaries of these provisional measures and the State of Paraguay to a private hearing that will be held at the seat of the Inter-American Court on February 20, 2012, as of 3:00 p.m until 5:00 p.m., in order for the Court to receive information and observations on the implementation of the provisional measures, pursuant to the considering paragraphs 7 to 10 of this Order.

2. Request the Secretariat of the Court to provide legal notice of this Order to the Inter-American Commission, the representatives of the beneficiaries of the provisional measures, and the State.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary