

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

OF APRIL 27, 2012

PROVISIONAL MEASURES REGARDING PARAGUAY

MATTER OF LM¹

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of July 1, 2011, in which it decided, *inter alia*:²

To require the State of Paraguay to adopt forthwith the measures necessary, adequate, and effective to protect the rights to humane treatment, identity and protection of the family of the child LM, allowing him to interact with his family of origin, with the support of the appropriate professional personnel to monitor the child's emotional circumstances [...]

2. The brief of December 13, 2011 in which the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") referred to the implementation of provisional measures and reported that it had issued an Admissibility Report in the case concerning this matter.

3. The briefs of August 26, October 13 and November 30, 2011, in which the State submitted information regarding the implementation of provisional measures and indicated that "the requested measure has been complied with."

4. The briefs of August 25 and 29, September 16, October 3 and November 21, 2011, and January 9 and February 15, 2012, in which the representatives of the beneficiary (hereinafter "the representatives") submitted their observations regarding the State's reports and the implementation of the measures.

¹ At the request of the Inter-American Commission, the identity of the child for whom the provisional measures were 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 custodial family."

² At http://www.corteidh.or.cr/docs/medidas/lm_se_01.pdf.

5. The Order issued by the President on January 23, 2012, in which he summoned the Inter-American Commission, the representatives and the State to a private hearing in order to receive information and observations regarding the implementation of the provisional measures.³

6. The private hearing held at the seat of the Court on February 20, 2012.⁴

7. The brief of February 21, 2012, in which the State reiterated the comments made during the aforementioned hearing concerning the fact that the custody of the child had been granted to his maternal grandparents on February 20, 2012, and therefore it requested that the Court lift the provisional measures.

8. The brief of February 28, 2012, in which the representatives requested that the Court "maint[ain] in force the provisional measures until the effective implementation" of the decision made at the domestic level with regard to the custody of the child "was verified."

9. The communication of March 19, 2012, in which the Commission observed, *inter alia*, that further information was required regarding "the effective implementation of [that] judicial decision, in terms of the real and specific circumstances of [the child] LM."

10. The brief of March 19, 2012, in which the representatives requested the lifting of the provisional measures.

11. The communication of March 30, 2012 in which the Inter-American Commission "considered appropriate that the provisional measures be lifted, under the terms requested by both parties."

12. The note of the Secretariat of April 9, 2012, recording the fact that the State did not submit the observations requested on March 1, 2012 by the full Court, neither within the established term, nor within the additional term granted through the note of the Secretariat of March 23, 2012.

CONSIDERING THAT:

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

2. Article 63(2) of the American Convention establishes that:

³ Cf. Matter of LM. Provisional Measures regarding Paraguay, Order of the President of the Inter-American Court of January 23, 2012. http://www.corteidh.or.cr/docs/medidas/lm_se_02.pdf

⁴ The following individuals appeared at the hearing: a) for the Inter-American Commission: Silvia Serrano Guzmán; b) for the representatives of the beneficiary: Lilliana Tojo, Celina Giraudy and Josefina Desinano of CEJIL, Alejandra Rodríguez of the organization "Centro por los Derechos de la Infancia y la Adolescencia" (Center for the Rights of Children and Adolescents), and Leticia Sandoval, and c) for the State of Paraguay: Oscar Llanes, Ambassador of Paraguay in Costa Rica; Inés Martínez, Human Rights Director of the Ministry of Foreign Affairs; Nury Montiel, Director of Human Rights of the Supreme Court of Justice; Ricardo González, advisor of the "Secretaría Nacional de Niñez y Adolescencia" (National Secretariat for Children and Adolescents), Salvador Meden Peláez, of the Embassy of Paraguay, and Renzo Cristaldo, Representative of the Attorney General's Office.

[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. This matter is regulated under Article 27 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”).⁵

4. Based on its jurisdiction, within the framework of provisional measures the Court can only and strictly consider those arguments directly related to extreme gravity, urgency and the need to prevent irreparable damage to persons. Any other issue or claim shall be analyzed and resolved during the consideration of the merits of the contentious case.⁶

5. In relation to the situation of the child LM, the State and the representatives have essentially reported the following:

a) On August 2, 2011 the Supreme Court of Justice of Paraguay issued a decision addressed to the “Defensoría de la Niñez y la Adolescencia” (Ombudsman’s Office for Children and Adolescents) in which it ordered the implementation of all means necessary to comply with the provisional measure of the Inter-American Court;

b) On August 23, 2011 the Ombudsman’s Office for Children and Adolescents requested that the Court of First Instance for Children and Adolescents implement the provisional measure ordered by the Inter-American Court and confirmed by the Supreme Court;

c) On that same date the judge of first instance in charge of the proceedings summoned the parents, the grandparents and the family with custody of LM to a hearing on August 31. On this occasion a psychologist and a social worker of the judicial branch were also summoned;

d) That same day the attorney of the O-A couple objected to the acting judge, filed a motion for the annulment of the proceedings and requested that the hearing be suspended;

e) On August 31, 2011 all the summoned parties appeared before the Court, except for the O-A couple, with custody of the child. The hearing took place and the judge ordered immediate compliance with the operative paragraphs established by the Inter-American Court in the Order of July 1, 2011, and called for provisional visiting arrangements to be made with the extended family (maternal grandparents) as of September 6, 2011;

f) On September 5, 2011 the O-A couple filed another motion of annulment and appealed against the ruling of August 31, considering that “the procedural acts performed are invalid since they were in violation of the rules of due process” and contravene the legal provisions that stipulate the mandatory and unavoidable presence of children’s representatives in proceedings of this nature;

⁵ Rules of Procedure of the Court approved during its Eighty-fifth Regular Period of Sessions held from November 16 to 28, 2009.

⁶ Cf. *Matter of James et. al.* Provisional Measures regarding Trinidad and Tobago. Order of the Inter-American Court of August 20, 1998, Considering paragraph 6; and *Matter of the Jiguamiandó and Curvaradó Communities.* Provisional Measures regarding Colombia. Order of the Inter-American Court of November 25, 2011, Considering paragraph 5

- g) On September 6, 2011, the date on which the first meeting between the maternal grandparents and the child LM was to be held, the custodial family did not arrive at the indicated place, and therefore the contact arrangement ordered in the judicial decision of August 31 did not take place;
- h) On September 20, 2011 the Court of Appeal for Children and Adolescents rejected the appeal for annulment filed by the custodial family and confirmed the order of August 31, 2011 in full, providing no further information on the grounds of the decision;
- i) On September 27, 2011 the first meeting took place between the child LM and the maternal grandparents, in the presence of a forensic psychologist and a social worker, in compliance with the order of September 31, 2011;
- j) On November 7, 2011 the Ombudsman's Office for Children and Adolescents filed a brief before the Judge of first instance requesting that the measure be extended to the biological parents;
- k) On November 8, 2011 the Judge confirmed the court's decision of August 31 (to not extend the contacts), providing no information on the grounds for the decision;
- l) On November 14, 2011 the Ombudsman filed a motion for reconsideration of the previous decision, which was "ambiguously resolved without interaction between the child and his parents," according to the representatives.
- m) On February 20 the O-A couple communicated to the Court for Children and Adolescents that they had relinquished their role as the custodial family of the child. In a hearing on this matter, which took place on the same day that this Court held the hearing (*supra* Having Seen 6), the maternal grandparents indicated that they would accept custody of the child LM, and
- n) On February 24 the court issued an order revoking the custody of the child held by the O-A couple and granted custody to the maternal grandparents.

6. During the private hearing held in the instant matter, the State reported on the contact arrangements made between the child LM and his biological family, which it considered should be implemented in a gradual manner, starting with the child's maternal grandparents in order to prevent any harm to the child, and claimed that it had complied with the provisional measures. Subsequently, the State presented the order issued by the Court of Children and Adolescents of February 24, 2012 which revoked the custody of the child LM awarded to the O-A couple and granted said custody to the maternal grandparents, and established the method and conditions for the handover of the child. Consequently, the State requested that the Court lift the provisional measures.

7. The representatives, while acknowledging that a rapprochement had taken place between the child LM and his biological family, claimed that the contact arrangements ordered had not been implemented gradually, but rather minimally, given that the arrangements only applied to meetings with the maternal grandparents, at a shopping center, and that since the first meeting they had only spent a total of 20 hours with the child. The representatives pointed out that the Ombudsman for Children and Adolescents had requested, on several occasions, that the contact arrangements be extended to include the parents of the child, something that was rejected by the Court for Children and Adolescents, which interpreted that the interaction with the "biological family" as indicated in the Order of the Inter-American Court of July 1, 2011 did not include the parents. With regard to the comments made by the State during the hearing, the representatives stated that no final decision had yet been made and that the contact arrangements had not

changed, neither in fact nor in law. Therefore, they requested that the provisional measures be continued. However, in March 2012 they confirmed that the child LM was living with his maternal grandparents and had daily contact with his mother and father, for which reason they requested the lifting of the provisional measures. Notwithstanding the foregoing, the representatives noted that the maternal grandparents did not have formal documents certifying that they are the child's guardians and that "the State ha[d] not provided the support of specialized personnel to monitor the child LM's process of interaction with and incorporation into his biological family."

8. The Inter-American Commission pointed out that there was no court ruling revoking of the custody of the child from the O-A couple and, although it viewed the gradual rapprochement between the child and his family in a favorable light, it considered that the process had not been carried out appropriately. During the hearing it stated that it felt it necessary for the Court to continue monitoring the child's relationship with his biological family until a final court ruling is issued. However, in its last brief it "deemed admissible the lifting of the provisional measures under the terms requested by both parties."

9. The Court notes that since the provisional measures have been in force, the State has provided incomplete information regarding their implementation and without the required frequency. As to the facts, the first meeting of the child and his maternal grandparents took place on September 27, 2011, almost three months after the provisional measures were ordered. Subsequently, there was no contact between the child LM and his biological parents given that the domestic courts did not order it, in spite of repeated requests by the Office of the Ombudsman for Children, a body appointed by the Supreme Court to implement the measures. On the day of the hearing convened by the President of the Court (*supra* Having Seen 6) the State reported that the O-A couple had communicated to the domestic courts their decision to relinquish custody of the child, and that during a court hearing held on that same day the maternal grandparents had agreed to accept custody. Indeed, on February 24, 2012 the aforementioned court issued a ruling in this regard, and therefore, since the maternal grandparents of the child were appointed as guardians, the child LM currently maintains a relationship with the extended family and also with his biological parents given that his mother lives in the same house as the grandparents.

10. The purpose of these provisional measures has been the need for the State to adopt the measures necessary, adequate and effective to protect the rights to humane treatment, identity and protection of the family of the child LM, allowing him to interact with his family of origin while the judicial proceedings to define his legal status were being resolved. The Court notes that there was a lack of clear information regarding the manner and circumstances in which the child's transition from the custodial family to the family of origin was carried out, which occurred in an immediate and not a gradual manner. Nor was the Court provided with information indicating that this rapprochement was carried out with the support of appropriate professional personnel to monitor the child's emotional situation. Nevertheless, the fact is that the circumstances that gave rise to the adoption of these provisional measures no longer exist, and that the State, the representatives and the Commission agree that the lifting of the measures is appropriate. Accordingly, the Court deems it admissible to lift the provisional measures, on the understanding that the parties agree to this and without any detriment to the proceedings in the case admitted for consideration by the Inter-American Commission. The Court points out that, under the terms of Article 1.1 of the American Convention, the lifting of

provisional measures does not mean that the State is exonerated from its conventional obligations to afford protection to the child LM.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In the exercise of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of its Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court on July 1, 2011 in favor of the child LM.
2. To require the Secretariat of the Inter-American Court to notify the State of Paraguay, the Inter-American Commission on Human Rights and the representatives of the beneficiary of this Order.
3. To close the file on this matter.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary