

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JUNE 21, 2012**

**PROVISIONAL MEASURES
WITH REGARD TO THE DOMINICAN REPUBLIC**

CASE OF GONZÁLEZ MEDINA *ET AL.*

HAVING SEEN:

1. The order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of August 30, 2011, in which it decided:

1. To require the State to adopt, immediately, all necessary measures to protect the life and personal integrity of Mario José Martín Suriel Núñez, taking into account the situation and the specific circumstances of the case.

2. To require the State to take all pertinent measures to ensure that the measures of protection ordered in [the said] order are planned and implemented with the participation of the beneficiary of the measures or his representatives, so that the measures are provided diligently and effectively and, in general, to keep them informed about any progress in implementation.

3. To require the State to provide the Inter-American Court of Human Rights with information concerning the provisions of the first operative paragraph of this order by October 7, 2011, at the latest.

2. The Judgment on preliminary objections, merits, reparations and costs delivered by the Court on February 27, 2012 (hereinafter "the Judgment").

3. The notes of the Secretariat of the Court of November 1 and December 16, 2011, in which, on the instructions of the President of the Court, it reminded the State to forward the report required by the Court in its Order.

4. The brief of February 20, 2012, and its attachment, in which the Dominican Republic (hereinafter "the State" or "the Dominican Republic") provided information on the implementation of these provisional measures.

5. The brief of March 6, 2012, and its attachments, in which the representatives of the beneficiary (hereinafter "the representatives") forwarded their observations to the information provided by the State.

* Judge Rhadys Abreu Blondet, a Dominican national, recused herself from hearing the *case of González Medina et al.* and, in accordance with Article 19(1) of the Court's Rules of Procedure (approved by the Court during its LXXXV Regular Period of Sessions held from November 16 to 28, 2009), she did not participate in the deliberation of these provisional measures.

6. The brief of March 19, 2012, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) presented its observations on the information provided by the State, as well as with regard to the corresponding observations of the representatives.

7. The brief of April 16, 2012, and its attachment, in which the representatives communicated the request of the beneficiary of the measures that the provisional measures ordered in this case be lifted. This brief was transmitted to the State and the Inter-American Commission on April 19, 2012.

8. The brief of April 19, 2012, in which the State presented its bi-monthly report on the implementation of these provisional measures.

CONSIDERING THAT:

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

2. Article 63(2) of the Convention establishes that, for the Court to order provisional measures, three conditions must be met: (i) “extreme gravity”; (ii) “urgency,” and (iii) that their purpose is to “avoid irreparable harm to persons.” These three conditions are co-existent and must be present in every situation where the Court’s intervention is required. Similarly, the three conditions described must persist for the Court to maintain the protection ordered. If one of them is no longer valid, the Court must assess the pertinence of continuing the protection ordered,¹ without prejudice to being able to order it again if, in the future, the three conditions are present again. In addition, even though the standard used by the Court or its President to assess these requirements is *prima facie*² when ordering the measures of protection, the need to maintain them calls for an evaluation of the existence of situations of extreme gravity and urgency that gave rise to those measures.³

3. According to the provision established in Article 63(2) of the Convention provisional measures ordered by the Court are binding on the State in conformity to a basic principle of the law of international responsibility of the States, as supported by international case law, under which States are required to comply with international treaty obligations in good faith (*pacta sunt servanda*).⁴

¹ See *Case of Carpio Nicolle*. Provisional measures with regard to Guatemala. Order of the Court of July 6, 2009, Considering clause 14, and *Matter of Eloisa Barrios et al.* Provisional measures with regard to Venezuela. Order of the Court of February 4, 2010, Considering clause 2.

² See *Case of Raxcacó Reyes et al.* Provisional measures with regard to Guatemala. Order of the Court of August 30, 2004, Considering clause 14 and *Matter of Alvarado Reyes et al.* Provisional measures with regard to the United Mexican States. Order of the Court of May 26, 2010, Considering clause 14.

³ See *Matter of the Kankuamo Indigenous People*. Provisional measures with regard to Colombia. Order of the Court of April 3, 2009, Considering clause 7, and *Matter of Fernández Ortega et al.* Provisional measures with regard to Mexico. Order of the Court of February 20, 2012, Considering clause 27.

⁴ See *Matter of James et al. Provisional Measures regarding Trinidad and Tobago*. Order of the Court of June 14, 1998, considering clause 6. *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Court of May 6, 2010; considering clause 5 and *Matter of the Forensic Anthropology Foundation of Guatemala*. Provisional Measures regarding Guatemala. Order of the President’s Court of July 21, 2010. Considering clause 4.

4. Regarding this issue, Article 27 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure")⁵, where pertinent, establishes that:

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 pertinent, pursuant to Article 63(2) of the Convention.

[...]

3. In contentious cases before the Court, victims or alleged victims, or their representatives, may submit to it a request for provisional measures, which must be related to the subject matter of the case.

5. Under international human rights law, provisional measures are not merely preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. Provisional measures are applicable 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.⁴

6. These provisional measures were ordered by the Tribunal in the Order of August 30, 2011, at the request of the representatives. The Court found that the facts reported by the representatives revealed *prima facie* a situation of extreme gravity and urgency that justified the adoption of provisional measures to avoid irreparable damage to the life and personal integrity of Mario Suriel Núñez, who testified as a witness before this Tribunal at the public hearing held in the instant case. The alleged facts referred to the pursuit suffered by Mr. Suriel Núñez on August 7, 2011, that caused him to crash his car, the alleged surveillance observed by his neighbors, the anonymous telephone calls, and the consequent decision to abandon his residence.

7. Following the Court's adoption of the measures, the State presented a report and the representatives and the Inter-American Commission forwarded their corresponding observations (*supra* Having Seen clauses 4, 5 and 6).⁷ According to the information provided, the measure of protection implemented by the State in favor of the beneficiary consisted in "provid[ing] him with the telephone numbers of the communication centers of [the National Police] and the [...] Central Directorate, as well as the personal mobile telephone numbers and the vehicle pool of the Deputy Assistant Director against Organized Crime."⁸ This was the only measure of those offered by the State that the beneficiary accepted to be implemented. The Court takes note of and values the efforts made by the State to communicate with the beneficiary and to allow him to participate in the implementation of these provisional measures.

⁵ The Court's Rules of Procedure approved during its LXXXV Regular Period of Sessions held from November 16 to 28, 2009.

⁴ See *Case of the "La Nación" Newspaper*. Provisional measures with regard to Costa Rica. Order of the Court of September 7, 2001, Considering clause 4; *Matter of Alvarado Reyes et al.*, *supra* note **¡Error! Marcador no definido.**, Considering clause 4, and *Matter of the Forensic Anthropology Foundation*, *supra* note **¡Error! Marcador no definido.**, Considering clause 5.

⁷ Additionally, the State presented its first bi-monthly report on April 19, 2012 (*supra* Having Seen clause 8), before learning about the request for the lifting of the measures, which had been presented a few days earlier (*supra* Having Seen clause 7 and *infra* Considering clause 8).

⁸ According to the beneficiary, when he met with officials of the National Police, he informed them that he "did not agree with the idea of accepting alleged measures of protection such as assigning me a bodyguard or anything similar," but he did not "object to be given "a telephone number of a special contact, or a similar resource, for specific situations."

8. On April 16, 2012, the representatives forwarded to the Court a letter signed by Mr. Suriel Núñez in which he requested that “the provisional measures adopted [in his favor] be lifted,” because he considered that “compliance with [the obligation to investigate ordered in the Judgment] was the main guarantee of safety, not just for [himself], but also for the other members of the Truth Commission and the Dominican people in general.”

9. The Court observes that, since the adoption of the measures, it has not received any information concerning new situations of risk, harassment or threats involving the beneficiary, so that it has no information on the current situation of risk of Mr. Suriel Núñez. In this regard, the Tribunal finds that it has not been provided with any piece of information revealing the persistence of the situation of extreme gravity and urgency and the need to avoid irreparable damage that existed when it ordered the provisional measures in favor of Mario Martín Suriel Núñez.

10. Consequently, taking into account the explicit request of the beneficiary himself that the provisional measures be lifted, and the information presented by the parties in the framework of the proceeding on these measures, the Inter-American Court deems that the requirements of extreme gravity, urgency and need to prevent irreparable damage to the integrity and life of the beneficiary do not longer exist, so that it is in order to lift these provisional measures.

11. Without detriment to the foregoing, the Court recalls that Article 1(1) of the Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure the free and full exercise of those rights and freedoms to all those subject to their jurisdiction, under any circumstance. For their part, provisional measures are exceptional in nature and are complementary to this general obligation of the States. In this regard, the lifting of the provisional measures ordered the Tribunal cannot imply that the State is relieved of its treaty-based obligation of protection. Consequently, the Court emphasizes that, regardless of the adoption of provisional measures, the State is under the permanent obligation to respect and secure the rights of individuals in situations of risk and must conduct the necessary investigations to elucidate the facts, according to the terms established in the pertinent laws,⁹ particularly with regard to the rights and the protection of Mario Suriel Núñez.

THEREFORE:

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 27 and 31 of the Court’s Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights on August 30, 2011, to protect the life and personal integrity of Mario Martín Suriel Núñez.

⁹ See *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph, and *Case of López Álvarez et al. Provisional measures with regard to Honduras*. Order of the Court of January 26, 2009, twenty-seventh and twenty-eighth considering paragraphs.

2. To require the Secretariat to notify this Order to the Dominican Republic, the representatives of the beneficiary, and the Inter-American Commission on Human Rights.

3. To close this case file.

Diego García-Sayán
President

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary