

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
SEPTEMBER 4, 2012***

PROVISIONAL MEASURES WITH REGARD TO GUATEMALA

CASE OF RAXCACÓ REYES *ET AL.*

HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") issued on August 30, 2004, in which it decided, *inter alia*:

1. To require the State to adopt, without delay, the necessary measures to protect the life of Ronald Ernesto Raxcacó Reyes, Hugo Humberto Ruiz Fuentes, Bernardino Rodríguez Lara and Pablo Arturo Ruiz Almengor, so as not to hinder the processing of their cases before the inter-American system for the protection of human rights.

[...]

2. The Order of the Court of July 4, 2006, whereby it "consider[ed] the provisional measures ordered in favor of Mr. Hugo Humberto Ruiz Fuentes closed" and that "the obligations of the State, as mentioned in these provisional measures regarding Mr. Ronald Ernesto Raxcacó Reyes [were] replaced by the obligations that originated in the Judgment issued by the Court on September 15, 2005, in the *Case of Raxcacó Reyes v. Guatemala*." Also, the Orders of the Court of February 2 and November 21, 2007. In the latter, the Court ordered the lifting of the provisional measures ordered in favor of Mr. Pablo Arturo Ruiz Almengor.

3. The Order of the Court of May 9, 2008, in which it decided, *inter alia*:

[...]

* Judge Margarete May Macaulay informed the Court that, for reasons of force majeure, she would not be present at the deliberation and signing of this Order.

5. Require the State to maintain the provisional measures necessary to protect the life of Mr. Bernardino Rodríguez Lara, so as not to hinder the processing of his case before the inter-American system for the protection of human rights.

[...]

4. The briefs of July 8 and September 8, 2008, December 22, 2010, July 19, and November 4, 2011, wherein the Republic of Guatemala (hereinafter "the State" or "Guatemala") presented its reports on the implementation of and compliance with the provisional measures.

5. The briefs of August 11 and October 15, 2008, February 8 and August 19, 2011, wherein the representatives of the beneficiary (hereinafter "the representatives") presented their observations to the State's reports (*supra* having seen paragraph 4).

6. The briefs of August 29 and October 30, 2008, April 7 and August 26, 2011, wherein the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations to the State reports (*supra* having seen paragraph 4).

7. The note of the Secretariat of the Court of August 20, 2008, wherein it reiterated to the representatives that the information submitted "regarding the rulings issued on the appeals for review or protection in which the death penalty [of other inmates] has not been commuted, as well as information regarding the prison conditions, are not the subject of these provisional measures, but are related to the monitoring compliance with the Judgments delivered in the cases of *Raxcacó Reyes v. Guatemala* and *Fermin Ramírez v. Guatemala*."

8. The note of the Secretariat of the Court of April 13, 2011, wherein, following the instructions of the Court, the Inter-American Commission was asked to inform the Court, by no later than April 27, 2011, of "the status of the procedure in the case or petition of Mr. Bernardino Rodríguez Lara that is being processed before the Commission."

9. The brief of April 28, 2011, wherein the Commission informed the Court that "Mr. Bernardino Rodríguez Lara's petition is registered under the number P-169-04 and is currently in the stage of admissibility," in response to the note of the Secretariat of April 13, 2011 (*supra* having seen paragraph 8).

10. The note of the Secretariat of the Court of March 14, 2012, wherein, following the Court's instructions, the State was asked to submit another report "referring to the effectiveness of the Order of February 15, 2005, which ordered suspension of the execution of the death penalty imposed on Mr. Bernardino Rodríguez Lara."

11. The brief of April 20, 2012, wherein the State presented a report on the implementation of and compliance with these provisional measures and asked the Court to lift the provisional measures ordered in favor of Bernardino Rodríguez Lara.

12. The briefs of May 25 and 29, 2012, wherein the representatives presented their observations to the State's report, as well as the request to lift these measures (*supra* having seen paragraph 11).

13. The brief of June 14, 2012, wherein the Commission presented its observations to the State's report, as well as the request to lift the present measures (*supra* having seen paragraph 11).

CONSIDERING THAT:

1. These measures were issued in accordance with the Court's Order of August 30, 2004, based on a *prima facie* assessment of a situation of extreme gravity and urgency, which made it necessary to prevent irreparable damage to the right to life of the then beneficiaries, so as not to hinder the processing of their cases before the inter-American system for the protection of human rights (*supra* having seen paragraph 1). Likewise, in its Order of May 9, 2008, the Court ordered the State to maintain the measures in favor of Mr. Bernardino Rodríguez Lara (*supra* having seen paragraph 3). Given that eight years have elapsed since the provisional measures were adopted in favor of the beneficiary, and considering that Guatemala has requested the lifting of these (*supra* having seen paragraph 11), the Court deems it appropriate to assess the information submitted by the parties.

2. The Court reiterates that, when rendering measures of protection, the principle of the standard used for assessing the requirements of the Court or the person presiding it is *prima facie*, and it has sometimes been necessary to apply suppositions in cases where protection is necessary.¹ If a State requests the lifting or modification of the provisional measures ordered, it must present sufficient evidence and arguments to allow the Court to conclude that the risk or threat no longer meets the requirements of extreme gravity and urgency in order to avoid irreparable damage.² The Court must take into account that, according to the Preamble of the American Convention, international protection that regards conventions in nature "reinforces or complements the protection provided by the domestic law of the American States." Therefore, should there be evidence that the State in question has implemented effective mechanisms or measures of protection for the beneficiaries of the provisional measures, the Court may decide to lift the provisional measures, delegating the obligation to protect to the primary body responsible, namely, the State.³

3. On April 20, 2012, the State reported that on September 23, 2011, the Institute of Public Criminal Defense filed a new appeal for a review in favor of Mr. Bernardino Rodríguez Lara before the Criminal Chamber of the Supreme Court of Justice⁴ that, in its decision of October 28, 2011, declared the review admissible, and consequently, annulled the appealed judgment with regard to the imposition of the penalty, punishing Mr. Bernardino Rodríguez Lara for committing the offenses of kidnapping or abduction and aggravated theft with a "non-commutable sentence of fifty years imprisonment." Based on the foregoing, it requested that the Court lift these provisional measures, considering that the reason for which these were granted no longer exists.

¹ Cf. *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 August 18, 2000, ninth considering paragraph, and *Matter of Gladys Lanza Ochoa*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of June 28, 2012, twenty-second considering paragraph.

² Cf. *Matter of Liliana Ortega et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of March 1, 2005, eleventh considering paragraph, and *Case of 19 Tradesmen*. Provisional Measures regarding Colombia. Order of the Inter-American Court of Human Rights of June 26, 2012, twenty-fifth considering paragraph.

³ Cf. *Matter of Luis Uzcátegui*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 20, 2003, thirteenth considering paragraph, and *Matter of Ramírez Hinojosa et al.* Provisional Measures regarding Peru. Order of the Inter-American Court of Human Rights of November 22, 2011, twenty-first considering paragraph.

⁴ Previously, the State and the representatives indicated that the beneficiary's defense filed appeals for a review in 2006 and 2008, which were rejected.

4. The representatives confirmed that, in the context of “the appeal for review,” the Criminal Chamber of the Supreme Court of Justice decided on October 28, 2011, to commute the death penalty imposed on Mr. Rodríguez Lara to a non-commutable prison sentence of fifty years. They added that this jurisdictional body subsequently “modified its decision and applied the penalty established in the ordinary regulations in force at the time of its commission for that offense, imposing a non-commutable prison sentence of thirty years.” In this regard, they agreed that the provisional measures in favor of Mr. Bernardino Rodríguez Lara are no longer necessary, given that he is no longer facing the death penalty.

5. The Commission noted with approval that the death penalty imposed on Mr. Rodríguez Lara has been commuted to imprisonment. Bearing in mind the position of the representatives and the fact that the purpose of the provisional measures granted in favor of Mr. Bernardino Rodríguez Lara was to protect his life, the Commission held that the reasons for which these measures were granted no longer exist, and therefore considered it appropriate to lift these.

6. Now, based on the information provided by the State on April 20, 2012, which was confirmed by the representatives, and noting the approval of the parties and the Commission, the Court considers that, according to the ruling of the Supreme Court of Justice of October 28, 2011, the situation of extreme gravity and urgency for the life of Mr. Bernardino Rodríguez Lara has ceased, inasmuch as the death sentence was commuted to a prison sentence. Consequently, the Court concludes that the reasons that prompted the adoption of provisional measures in favor of Mr. Bernardino Rodríguez Lara no longer exist, for which reason it is appropriate to lift the measures ordered in his favor.

7. As to the information received by the State and the representatives, as well as the observations of the Commission regarding the decisions issued in relation to the appeals of review filed by the defense attorneys of other persons sentenced to death before the Criminal Chamber of the Supreme Court of Justice; the decisions of the Constitutional Court on the writs of amparo filed against the rulings wherein the appeals for review were denied; the lack of a procedure to grant or deny an appeal for commutation of sentence or pardon, as well as the prison conditions of Mr. Rodríguez Lara, the Court notes that these matters are not the subject matter of these provisional measures, but pertain to the monitoring of compliance with the Judgments delivered in the cases of *Raxcacó Reyes v. Guatemala* and *Fermín Ramírez v. Guatemala*,⁵ as was communicated to the parties in the Court’s Order of May 9, 2008, considering paragraphs 57 and 58, and through the note of the Secretariat of August 20, 2008 (*supra* having seen paragraphs 3 and 7). Accordingly, it is not up to this Court to rule on this matter in the context of these provisional measures.

8. Finally, the Court reiterates that Article 1(1) of the American Convention establishes the general obligation of States Parties to respect the rights and freedoms enshrined therein and to guarantee their free and full exercise to all persons subject to their jurisdiction, in all circumstances. Moreover, provisional measures are exceptional in nature and are complementary to this general obligation of the States. In this regard, the presumptions that persuade the Court to lift provisional measures can never imply that the State is exonerated from its treaty-based protection obligations. Hence, the Court emphasizes that, regardless of the existence of specific provisional measures, the State is obligated to guarantee Mr. Bernardino Rodríguez Lara’s rights. On this point, the Court notes that in

⁵ Cf. *Case of Raxcacó Reyes v. Guatemala. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, and *Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs*. Judgment of June 20, 2005. Series C No. 126.

requesting the lifting of these provisional measures, Guatemala indicated that the Directorate of the Prison System is aware of the legal situation of the inmate Bernardino Rodríguez Lara, for which reason it shall provide all the security measures required to safeguard his physical and mental integrity.

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 Article 27 of its Rules of Procedure,⁶

DECIDES TO:

1. Lift the provisional measures ordered by the Inter-American Court of Human Rights in its Order of August 30, 2004, which were adopted to protect the right to life of Mr. Bernardino Rodríguez Lara.
2. Reiterate that, under the terms of Article 1(1) of the American Convention, the lifting of provisional measures does not imply that the State is relieved from its treaty-based protection obligations.
3. Require the Secretariat of the Court to provide legal notice of this Order to the State of Guatemala, the Inter-American Commission on Human Rights, and the representatives of the beneficiary.
4. Close the case file on this matter.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Rhadys Abreu Blondet

Alberto Pérez Pérez

⁶ Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16-28, 2009.

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary