

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 19, 2013**

PROVISIONAL MEASURES WITH REGARD TO VENEZUELA

MATTER OF NATERA BALBOA

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the President") of December 1, 2009, in which the President at that time adopted urgent measures in this matter based on the assessment *prima facie* of a situation of extreme gravity and urgency in relation to the rights to life and to personal integrity of Eduardo José Natera Balboa owing to his alleged disappearance while he was in the custody of the State and, in particular, decided:

1. To require the State to adopt, immediately, all necessary measures to determine the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity.

[...]

6. To decide that this matter be heard by the Court in plenary at its eighty-sixth regular session to be held at the seat of the Court in San José, Costa Rica, from January 25 to February 6, 2010.

[...]

2. The Order issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on February 1, 2010, in which it decided, *inter alia*:

1. To ratify the Order of the President of the Court of December 1, 2009, and, consequently, the State must adopt, immediately, all necessary measures to determine the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity.

2. To reiterate that the State has the obligation to inform the Inter-American Court, specifically and in detail, about the implementation of the measures ordered.

[...]

3. The Order issued by the Court on May 15, 2011, in which the Court referred to the implementation of the provisional measures in this matter and, in particular, decided:

1. To reiterate that the State must adopt, immediately, all necessary measures to determine the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity.

2. To reiterate that the State has the obligation to inform the Inter-American Court, specifically and in detail, about the implementation of the measures ordered.

3. To decide that the State must report to the Inter-American Court of Human Rights, by July 30, 2011, at the latest, with regard to the provisions of the first operative paragraph of this Order.

Following the presentation of the said report, the State must continue reporting to the Inter-American Court every two months about the measures adopted in favor of the beneficiary of the provisional measures issued in this matter, and the representatives of the beneficiary and the Inter-American Commission on Human Rights must present their observations within four and six weeks, respectively, of notification of the State reports.

[...]

4. The communication of August 3, 2011, in which the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") asked for a "prudential extension" in order to forward the report requested in the third operative paragraph of the Order issued by the Court on May 15, 2011 (*supra* having seen paragraph 3), and the note of the Secretariat of August 5, 2011, in which the extension requested by the State was granted until August 12, 2011.

5. The notes of the Secretariat of October 6 and December 19, 2011, and July 17, 2012, in which the State was reminded that, pursuant to the third operative paragraph of the Order issued by the Court on May 15, 2011 (*supra* having seen paragraph 3), and following the extension granted by the note of the Secretariat of August 5, 2011 (*supra* having seen paragraph 4), the State should have presented its report on the measures adopted in this matter by August 12, 2011, at the latest. Consequently, on the instructions of the President of the Court, the State was asked to forward the report as soon as possible.

6. The note of the Secretariat of December 19, 2011, in which the Court asked the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to present a report on the procedural status of this matter being processed before the Commission by January 20, 2012.

7. The communication of January 20, 2012, in which the Commission advised that, at that date, it "ha[d] not received an individual petition related to the matter in question."

8. The communication of August 20, 2012, with which the Commission forwarded a communication from the State of Venezuela relating to the provisional measures ordered by the Inter-American Court in this matter, which, according to the Commission, "apparently, by an involuntary error [...] had been addressed to the Commission." In this regard, the Secretariat noted that the document of August 16, 2012, presented to the Commission by the State corresponded to information sent in response to the note of the Secretariat of the Court of July 17, 2012 (*supra* having seen paragraph 5).

9. The briefs of September 7 and October 17, 2012, in which the representatives of the beneficiary (hereinafter "the representatives") and the Inter-American Commission, respectively, presented their observations on the State's report (*supra* having seen paragraph 8).

10. The note of the Secretariat of May 7, 2013, in which it reminded the State that, in keeping with the third operative paragraph of the Order issued by the Court on May 15, 2011 (*supra* having seen paragraph 3), the State should report to the Inter-American Court every two months on the measures adopted in favor of the beneficiary of the provisional measures issued in this matter. Since the last State report had been received by the Secretariat on August 20, 2012, on the instructions of the President of the Court, the State was requested to present a report on the measures adopted in this matter by May 31, 2013. At the time this Order is issued, this report had not been received.

11. The note of the Secretariat of July 30, 2013, in which the Court asked the Commission to advise whether it had received an individual petition related to the matter in question by August 6, 2013, and the communication of August 7, 2013, in which the Inter-American Commission advised that "to date, it ha[d] not received an individual petition."

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since August 9, 1977, and, pursuant to Article 62 of the Convention, accepted the contentious jurisdiction of the Court on June 24, 1981.

2. Article 63(2) of the American Convention stipulates 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. The provisions of Article 63(2) of the Convention signify that the provisional measures ordered by this Court are obligatory, because a basic principle of international law, supported by international case law, has indicated that State must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).¹ While they are in force, these orders entail a special obligation of protection for the beneficiaries of the measures, and failure to comply with them may give rise to the international responsibility of the State.²

4. Article 63(2) of the Convention stipulates that three conditions must co-exist for the Court to be able to order the adoption of provisional measures: (i) “extreme gravity”; (ii) “urgency,” and (iii) that they are intended “to avoid irreparable damage to persons.” These three conditions must coexist and be present in any situation in which the Court’s intervention is requested. Thus, this Court recalls that the American Convention requires that, in order to adopt provisional measures, the gravity must be “extreme”; in other words, at its highest and most intense level. The urgent nature means that the risk or threat involved must be imminent, which also supposes that the response to remedy it is immediate. Lastly, with regard to the damage, there must be a reasonable probability that it will materialize, and it should not relate to legal rights or property that may be repaired. The Court recalls that, when ordering the measures of protection, the standard of assessment of the requirements by the Court or its President is *prima facie* and, at times, it is necessary to apply presumptions in view of the need for protection.³ Furthermore, these three conditions must persist for the Court to maintain the protection ordered. If one of them has ceased to be valid, the Court must assess the pertinence of continuing the protection ordered.⁴ Moreover, maintenance of the measures of protection requires the Court to make a more rigorous evaluation of the persistence of the situation that gave rise to them.⁵

¹ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph, and *Case of the Barrios Family*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of May 30, 2013, third considering paragraph.

² Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 20, 2002. Series C No. 94, paras. 196 to 200, and *Matter of certain Venezuelan Prisons, Penitentiary Center of the Central Occidental Region*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 13, 2013, second considering paragraph.

³ Cf. *Case of Raxcacó Reyes et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, tenth considering paragraph, and *Ávila Moreno et al. (Case of Operation Genesis)*. Request for provisional measures with regard to Colombia, Order of the Inter-American Court of Human Rights of May 30, 2013, eighth considering paragraph.

⁴ Cf. *Case of Carpio Nicolle*. Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of May 22, 2013, third considering paragraph.

⁵ Cf. *Matter of the Kankuamo Indigenous People*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, seventh considering paragraph, and *Matter of Álvarez et al.*

5. These measures were ordered based on the *prima facie* assessment of a situation of extreme gravity and urgency in relation to the rights to life and to personal integrity of the beneficiary owing to his alleged disappearance while in the State's custody. The events that gave rise to these measures consist in the fact that Mr. Natera, who was deprived of liberty in the "El Dorado" Oriental Region Prison, Bolívar State, was allegedly disappeared as of November 8, 2009, when his mother had a last telephone conversation with him. In addition, several testimonies have indicated that, on that date, at approximately 10.30 a.m., Mr. Natera was in the prison walking near the entrance gate, when several member of the National Guard led by a captain beat him and forced him into a black Ford car. When ordering the State to adopt measures, it was also noted that the next of kin and his representatives had denounced the incident to various State authorities including: (a) the Prosecutor's Office of the Public Prosecution Service with competence for Fundamental Rights of the city of Bolívar; (b) the Prosecutor General; (c) the National Prison Services Directorate, and (d) the Court with Supervisory Powers of the Second Circuit of the Criminal Judicial Circumscription of Bolívar State. The Inter-American Court had not been advised of any specific progress or results as a result of these actions that would allow what happened to Mr. Natera or his whereabouts to be determined. Thus, the Court considered that its intervention in this matter in order to avert the threat could not be delayed.

6. In this regard, the Court recalled that, whenever there are convincing reasons to suspect that a person has been subjected to disappearance, the prompt and immediate action of the judicial and prosecution authorities is essential, ordering opportune and necessary measures aimed at determining the whereabouts of the victim or the place where he may be deprived of liberty.⁶ Also, it emphasized that, in situations of deprivation of liberty such as those of this case, among the essential judicial guarantees, *habeas corpus* represented the appropriate mechanism to determine the situation and whereabouts of Mr. Natera, as well as to ensure respect for his life and to protect his personal integrity.⁷

7. In view of the fact that three years and eight months have elapsed since the adoption of the provisional measures in favor of the beneficiary, and based on the nature of the events that gave rise to their adoption, the Court finds it opportune to examine the status of the implementation of these measures in order to decide whether it is necessary to maintain them in force. In this regard, it is appropriate to recall that, owing to its competence, in the context of provisional measures the Court must only consider arguments that are strictly and directly related to the extreme gravity, urgency and need to avoid irreparable damage to persons.

8. Considering, also, that, in this matter, there is no related individual petition being processed before the Commission, as the Commission has advised (*supra* having seen paragraphs 8 and 11), the Court must ensure that the provisional measures are not distorted in the sense that they are being used to obtain what should be achieved by means of a contentious case.⁸ Therefore, the only admissible analysis is limited to the protective nature of

Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of May 22, 2013, forty-fourth considering paragraph.

⁶ Cf. *Matter of Natera Balboa*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 1, 2010, thirteenth considering paragraph.

⁷ Cf. *Matter of Natera Balboa*, *supra* note 6, thirteenth considering paragraph.

⁸ Cf. *Matter of Lilliana Ortega et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of July 9, 2009, fourth considering paragraph, and *Matter of Guerrero Gallucci*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 21, 2011, twenty-ninth considering paragraph.

these provisional measures, inasmuch as they seek to avoid irreparable damage to persons.⁹

9. Following the Order of the President and then of the Court (*supra* having seen paragraphs 1 and 2), the State should have adopted, immediately, any necessary measures to determine the situation and whereabouts of Mr. Natera Balboa and to protect his life and personal integrity. Nevertheless, the Court notes that the information provided does not show that the State has implemented any special measure to this end. Indeed, there is no record that the State has responded to the application for *habeas corpus* filed by the next of kin of Mr. Natera Balboa on November 16, 2009, because it proceeded to joinder it to the criminal investigation that was underway. The last information provided by the State in this regard is that, on December 20, 2009, the Public Prosecution Service had filed formal charges against ten members of the Bolivarian National Guard, three officials of the Ministry of the People's Power for Interior Relations and Justice, as well as the former Director of the Venezuelan General Penitentiary for the crimes of aggravated continuing facilitation of evasion, corruption, and conspiracy to commit a crime, and that the preliminary hearing was pending. This information repeats information that had already been evaluated by the Court when issuing its Order of May 15, 2011.¹⁰ The State has not provided information that would reveal subsequent actions, because at April 2012, the said preliminary hearing had not been held.

10. The representatives forwarded more recent information on the status of the proceedings and indicated that: (a) on May 11, 2011, the Appeals Court of the Criminal Judicial Circuit of Bolívar State had declared admissible the appeal filed by the representatives of the Public Prosecution Service against the judgment delivered on May 18, 2010, by the Fourth Court with Supervisory Powers of this Criminal Judicial Circuit, during the preliminary hearing, so that a new preliminary hearing had been ordered; (b) on August 2, 2011, the case was referred to the Fifth Court with Supervisory Powers; (c) on March 5, 2012, the court asked the Agenda Office for a date to hold the preliminary hearing; (d) on May 9 and 25, 2012, the Prosecution ratified to the court the request for a date to hold the preliminary hearing, and (e) on June 21, the hearing was scheduled for July 2, 2012; however, the hearing was postponed until July 26, and subsequently postponed again until August 20, 2012, when it was again postponed until September 17, 2012. Furthermore, they indicated that, "on several occasions, an attempt had been made to contact Eduardo Natera Balboa's mother, but this was not possible because she had moved after receiving various threats." In addition, they indicated that the State had not advised the representatives "of any action taken, not even by sending notes or invitations to hold a meeting." Consequently, they asked the Court that, when reiterating to the State that these measures remained in force, it "emphasize that the case does not refer to an 'aggravated escape' as indicated in the State's last report, but to a disappearance."

11. In the Commission's opinion, "the State has not taken the necessary measures to discover the whereabouts of Mr. Natera Balboa, and [...] the domestic proceedings are being processed as if it was an ordinary proceeding, rather than an exhaustive and immediate search to respond to a situation of a possible forced disappearance." In addition, the Commission reiterated its "profound concern with regard to the situation of the beneficiary, whose fate or whereabouts have still not been determined by the State of Venezuela," and also due to the fact that "the only theoretically expedite judicial measure that the next of kin have, that is the application for *habeas corpus*, has been joindered to the criminal investigation."

⁹ Cf. *Case of the "La Nación" newspaper*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph, and *Case of the Barrios Family*, *supra* note 1, second considering paragraph.

¹⁰ Cf. *Matter of Natera Balboa*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of May 15, 2011, fifth considering paragraph.

12. In this regard, this Court finds it opportune to recall that a supposed absence of investigation by a State does not necessarily constitute, in itself, a circumstance of extreme gravity and urgency that warrants maintaining the provisional measures,¹¹ unless the lack of investigation is clearly connected to the extremely grave risk or threat to life and personal integrity. In sum, failure to comply with the obligation to investigate is not *per se* sufficient reason to maintain the provisional measures.¹² In this regard, the Court observes that, when adopting these provisional measures, the absence of an investigation into Mr. Natera Balboa's whereabouts was clearly connected to the extreme gravity for his life and personal integrity.¹³ Likewise, when deciding to maintain them in force in 2011, the absence of information on his whereabouts led to the presumption that he was in grave danger of having his rights to life and personal integrity violated.¹⁴

13. As Mr. Natera Balboa is still disappeared, the grave risk to his life and integrity continues. However, the passage of time in this matter and the lack of progress in the investigations directly affect the practical effects of these provisional measures, whose basic purpose was to avoid irreparable damage to the life and integrity of Mr. Natera Balboa by the prompt action of the national authorities to discover his whereabouts. Even though these measures have been in force for three years and eight months, the Court still has no information on specific progress or results that would allow it to determine clearly what happened to Mr. Natera Balboa or his whereabouts, so that the protection that it was hoped they would provide has been ineffective. Consequently, owing to the particular circumstances of this matter, and taking into account that provisional measures are exceptional in nature and relate to a specific temporary situation so that, given their characteristics, they cannot be perpetuated indefinitely,¹⁵ the Court must order that they be lifted and that the possible violations of the American Convention derived from what happened to Mr. Natera Balboa be examined by means of a contentious case, if the necessary presumptions exist, and not in the context of the provisional measures.¹⁶

14. In addition, it is opportune to recall that the Court has indicated that, regardless of the existence of specific provisional measures, the State has a special obligation to ensure the rights of those deprived of their liberty¹⁷ because the State is in a special position of guarantor with regard to the or to those who are in a situation of risk, and to expedite the investigations

¹¹ Cf. *Case of Carpio Nicolle et al.*, *supra* note 4, twenty-fourth considering paragraph, and *Matter of Álvarez et al.*, *supra* note 5, one hundred and third considering paragraph.

¹² Cf. *Case of Carpio Nicolle et al.*, *supra* note 4, twenty-fourth considering paragraph, and *Matter of Álvarez et al.*, *supra* note 5, one hundred and third considering paragraph.

¹³ Cf. *Matter of Natera Balboa*, *supra* note 6, twelfth and thirteenth considering paragraphs.

¹⁴ Cf. *Matter of Natera Balboa*, *supra* note 10, ninth considering paragraph.

¹⁵ Cf. *Matter of the Communities of the Jiguamiandó and of the Curbaradó*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, seventieth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional measures with regard to Dominican Republic. Order of the Inter-American Court of Human Rights of February 29, 2012, forty-eighth considering paragraph.

¹⁶ Cf. *Matter of Children and Adolescents deprived of liberty in the "Tatuapé Complex" of the CASA Foundation*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of July 3, 2007, seventeenth considering paragraph and *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, twenty-ninth considering paragraph.

¹⁷ Cf. *Matter of the Mendoza Prisons*. Provisional measures with regard to Argentina. Order of the President of the Inter-American Court of Human Rights of August 22, 2007, sixteenth considering paragraph, and *Matter of the Socio-educational Internment Facility*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of November 20, 2012, twenty-first considering paragraph.

required to clarify the facts and to punish those responsible, as appropriate.¹⁸ Indeed, 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 to all those subject to their jurisdiction, the free and full exercise of those rights and freedoms, and this is required not only with regard to the powers of the State, but also in relation to the actions of private third parties.¹⁹

15. Also, the State had the obligation to present its bi-monthly reports on the implementation of the provisional measures within the time frame and with the frequency indicated by the Court.²⁰ However, since these provisional measures were ordered, the State has only submitted two of the 22 reports that it should have presented, so that the State has not complied with its obligation to provide information duly and promptly. The Court has established that failure to comply with the State obligation to provide information on all the provisional measures adopted in compliance with the Court's decisions is especially serious, in view of the juridical nature of these measures, which seek to prevent irreparable damage to persons in situations of extreme gravity and urgency.²¹

16. Lastly, the Court recalls that the adoption, lifting, or declaration of non-compliance with the provisional measures does not imply an eventual decision on the merits of the dispute if the case should, ultimately, be submitted to the consideration of the Court, nor does it prejudge the State's responsibility for the facts denounced.²²

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its attributes under Articles 63(2) of the American Convention on Human Rights and 27 and 31(2) of the Rules of Procedure of the Court,²³

DECIDES:

1. To deplore the fact that the State has not complied with these provisional measures that were adopted to determine the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and personal integrity.

¹⁸ Cf. *Case of Carpio Nicolle et al.*, *supra* note 4, twenty-fourth considering paragraph, and *Matter of Álvarez et al.*, *supra* note 5, one hundred and fourth considering paragraph.

¹⁹ Cf. *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to Colombia. Order of the Court of June 18, 2002, eleventh considering paragraph, and *Matter of the Socio-educational Internment Facility*, *supra* note 17, twenty-first considering paragraph.

²⁰ Cf. *Matter of Lilliana Ortega et al.* Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of December 2, 2003, twelfth considering paragraph, and *Matter of Natera Balboa*, *supra* note 10, eleventh considering paragraph.

²¹ Cf. *Case of the Urso Branco Prison*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of July 7, 2004, sixteenth considering paragraph, and *Matter of Alvarado Reyes*. Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of November 23, 2012, twenty-fourth considering paragraph.

²² Cf., *mutatis mutandi*, *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the President of the Inter-American Court of Human Rights of July 13, 1998, sixth considering paragraph; *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional measures with regard to Dominican Republic. Order of the Inter-American Court of Human Rights of September 7, 2012, forty-third considering paragraph, and *Case of the Barrios Family*, *supra* note 1, sixteenth considering paragraph.

²³ The Court's Rules of Procedure approved at its eighty-fifth regular session held from November 16 to 28 2009.

2. To lift the provisional measures required by the Inter-American Court of Human Rights in its Orders of February 1, 2010, and May 15, 2011, without prejudice to the subsistence of the general obligations that correspond to the State under Article 1(1) of the American Convention on Human Rights.

3. To require the Secretariat of the Court to notify this Order to the Bolivarian Republic of Venezuela, the Inter-American Commission on Human Rights, and the representatives of the beneficiary.

4. To archive the file of this matter.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto de F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary