

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 29, 2012*
REQUEST FOR PROVISIONAL MEASURES
CASE OF DE LA CRUZ FLORES v. PERU

HAVING SEEN:

1. The Judgment on Merits, Reparations and Costs (hereinafter "the Judgment") issued in the instant case by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on November 18, 2004.
2. The Orders of the Inter-American Court of November 23, 2007, September 1, 2010, and February 25, 2011, on the monitoring of compliance with the judgment and the request for provisional measures.
3. The brief of December 30, 2011, and its attachments, whereby the representative of the victim filed a request for provisional measures, in accordance with Articles 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Article 26 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), in order for the State to "refrain from issuing a warrant for the arrest of Ms. De La Cruz Flores and an order barring her exit from the country, as her poor health prevents her from appearing before the Peruvian courts, which seek to hold new oral proceedings, sixteen (16) years after launching a criminal investigation against her."
4. The communication of January 3, 2012, whereby the representative expanded his arguments "regarding the [extreme gravity and urgency, as well as the need to avoid irreparable damage] to María Teresa De La Cruz."
5. The communication of February 1, 2012, whereby the Illustrious State of Peru (hereinafter "the State" or "Peru") forwarded its observations on the request for provisional measures filed by the representative, and asked the Court to rule the representative's request inadmissible.
6. The communication of February 21, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented its observations on the request for provisional measures filed by the victim's representative.

* Judge Diego García-Sayán, of Peruvian nationality, recused himself from this request for provisional measures, in accordance with Article 19(2) of the Statute and Article 19 of the Court's Rules of Procedure.

CONSIDERING THAT:

1. Peru ratified the American Convention on Human Rights on July 28, 1978, and, in accordance with Article 62 thereof, accepted the contentious jurisdiction of the Court on January 21, 1981.
2. Article 63(2) of the Convention stipulates that for the Court to order provisional measures, three conditions must be met: (i) "extreme gravity;" (ii) "urgency," and (iii) a need to "avoid irreparable damage to persons." These three conditions must be present at the same time and in all situations in which the Court's intervention is requested. In addition, these three conditions must persist in order for the Court to maintain the protection ordered. If one of these conditions is no longer met, the Court must assess the pertinence of continuing with the protection ordered.¹
3. The adoption of provisional measures requires that the gravity of the situation be "extreme," meaning that it must be at the highest or most elevated level. The urgent nature of the situation implies that the risk or threat involved is imminent, which also supposes that the answer to remedy the situation is immediate. Lastly, a reasonable probability must exist that harm will come to pass, and the situation must not involve rights or legal interests that can be repaired.²
4. According to Article 27(1) of the Court's Rules of Procedure, "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 appropriate, pursuant to Article 63(2) of the Convention."
5. Under international human rights law, provisional measures are not only precautionary, in the sense of preserving a juridical situation, but are also fundamentally protective inasmuch as they protect human rights and seek to prevent irreparable damage to persons. In this way, provisional measures become a true jurisdictional guarantee that is preventive in nature.³

a) Representative's request and the parties' observations

6. The representative referred to the "measure preventing [Ms. De La Cruz's] exit

¹ 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; *Matter of Certain Venezuelan Penitentiary Centers*, Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of July 6, 2011, fourth considering clause, and *Matter of Urso Branco Prison*. Provisional Measures with regard to Brazil. Order of the Inter-American Court of Human Rights of August 25, 2011, third considering paragraph.

² Cf. *Matter of Monagas Judicial Confinement Center ("La Pica")*, *Matter of Yare I and Yare II Capital Region Penitentiary Center*, *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison)*, and *Internado Judicial Capital El Rodeo I y el Rodeo II*. Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, third considering paragraph; *Matter of Belfort Istúriz et al.* Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, eighth considering paragraph, and *Matter of COFAVIC-Case of the Caracazo*. Provisional Measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of May 28, 2010, sixth considering paragraph.

³ Cf. *Case of the Newspaper "La Nación"*. Provisional Measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph; *Matter of Alvarado Reyes et al.* Provisional Measures with regard to Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, fourth considering paragraph, and *Matter of the Forensic Anthropology Foundation*. Provisional Measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 21, 2010, fifth considering paragraph.

from the country," adopted through the National Criminal Court's order of August 22, 2011. The representative alleged that this order was issued despite the State's knowledge that Ms. De La Cruz "[was] not in Peruvian territory," as she was in Santiago, Chile, receiving "medical care to treat the effects that the State's actions have had on her health." Moreover, the representative informed the Court that after requesting a postponement of the oral proceedings, the National Criminal Court issued an order on December 14, 2011, whereby it established "March 30, 2012, at 9 a.m. as the date of the oral proceedings," and notified "the accused [...]" under warning of being found in contempt of court and ordered arrested should she fail to appear."

7. The representative argued that:

a) the extreme gravity of the situation results from "these warrants for her arrest and orders barring her exit from the country," which "have caused Ms. De La Cruz to undergo a serious emotional crisis that threatens her personal integrity; for this reason, she is in critical condition, and her doctors have recommended that her recovery process not be interrupted." The representative added that Ms. De La Cruz faces "other threats," namely: (i) in the event she does not appear at the hearing, "she could be tried *in absentia* after being declared 'in contempt of court,'" which "would limit her right to defense" and the exercise of "the minimum judicial guarantees of every defendant," and (ii) in the event she appears at the hearing, the State could "confiscate her passport," and she could be "arrested and taken to prison for having allegedly violated the order of the National Criminal Court of August 22, 2011, which barred her exit from the country." Lastly, the representative stated that there is "a threat to [her] personal freedom [...], which threatens her personal integrity;"

b) the urgency of the situation is related to the fact that "the arrest warrant and the order barring her exit from the country have already been issued by the State," and in this regard, if the victim were to enter into "Peruvian territory to attend the hearing [...], she would not be able to return to Chile to continue her medical treatment as long as her legal status remained undefined, and should she fail to appear, she could be ordered arrested," and

c) it is necessary to avoid irreparable damage, "given that barring [the victim] from leaving the country or depriving her of her freedom," would "prevent her from receiving further medical treatment, with serious consequences to her health and personal integrity, whose effects could be irreversible."

8. For its part, the State asked that the representative's request for provisional measures be declared inadmissible considering that:

a) the request "lacks arguments demonstrating the existence of a situation of extreme gravity and urgency, and there is no risk of irreparable damage." This is demonstrated by the fact that the Special Criminal Court of the Supreme Court of Justice declared the judgment convicting the petitioner and sentencing her to 20 years in prison null and void;

b) "the State of Peru is not a threat to the [protection] of [human rights]," and

c) "[i]f the petitioner disagrees for health reasons with the date established for her to appear at the criminal trial against her, and believes that for health reasons she cannot return to the country, it must be taken into consideration

that her accredited representative in the proceedings has all the means at his disposal to request (as he has done previously) a change of date."

9. The Commission observed that the request made by the victim's representative is based on: (i) "the progress of the criminal proceedings and the order summoning Ms. De La Cruz Flores to appear," and (ii) "the importance of the continuation of the medical treatment the victim is receiving in Chile." It argued that "both issues fall under the proceeding for the monitoring of compliance with the judgment, and [...] it is therefore appropriate that they continue to be monitored in order to ensure full compliance." Notwithstanding the foregoing, it raised the possibility that the Court "assess most positively, among the different mechanisms available, including provisional measures, that which is most appropriate for addressing Ms. De la Cruz Flores' current situation in order to prevent a new violation of human rights to her detriment."

b) Considerations of the Court

10. The Court recalls that in its judgment of 2004, it ruled on various violations of the American Convention that occurred in the first criminal trial carried out against the victim. In the said judgment, it ordered that the principle of legality and non-retroactivity, as well as the requirements of due process of law, be respected in the second criminal trial against Ms. De La Cruz.

11. The Court considers it pertinent to recall that the mechanism of provisional measures requires demonstrating the conventional requirements of gravity, urgency, and irreparable damage established in Article 63(2) of the Convention with regard to persons to whose favor the measures are being sought (*supra* considering paragraph 2). In this regard, the Court has already indicated that in accordance with the Convention and the Rules of Procedure, the burden of proving these elements *prima facie* rests upon the petitioner.⁴

12. The Court finds it necessary to obtain greater information from the parties in order to rule on the request for provisional measures. In particular, it asks for the following information to be forwarded by March 30, 2012, at the latest:

Representative

- a) If subsequent to the National Criminal Court's decision of December 14, 2011, the representative has requested a new postponement of the trial until Ms. De La Cruz Flores concludes her psychological treatment in Chile, and
- b) Details regarding Ms. De La Cruz Flores' allegedly serious health condition.

State

- a) Whether, in the event that Ms. De La Cruz Flores enters Peru, she would retain her freedom, and, in particular, whether there are any guarantees that "her passport would [not] be confiscated" or that she would not be "detained and taken to prison," and

⁴ Cf. *Matter of Belfort Istúriz et al.* Provisional Measures with regard to Venezuela. Order of the Court of April 15, 2010, fifth considering paragraph; *Matter of COFAVIC-Case of the Caracazo*, Provisional Measures with regard to the Bolivarian Republic of Venezuela. Order of the Court of May 28, 2010, eighth considering paragraph; *Matter of Four Ngöbe Indigenous Communities and its Members*. Provisional Measures with regard to Panama. Order of the Court of May 28, 2010, eleventh considering paragraph, and *Matter of the Colombian Commission of Jurists*. Provisional Measures with regard to the Republic of Colombia. Order of the Court of November 25, 2010, considering paragraph 14.

b) Indicate clearly whether in the event Ms. De La Cruz Flores appears at the proceedings, she would be allowed to return to Chile to continue with her psychological treatment.

13. Lastly, the Court recalls that States have a constant and permanent obligation to comply with their general obligations as established under Article 1(1) of the Convention to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons under its jurisdiction.⁵ In addition, the Court recalls that the State must continue adopting the measures necessary to comply with its obligations stipulated in the first and fifth operative paragraphs of the Judgment on the Merits, Reparations, and Costs of November 18, 2004 in the instant case, to "observe the right to freedom from *ex post facto* laws embodied in Article 9 of the American Convention and the requirements of due process in the new trial of María Teresa De La Cruz Flores" and "provide medical and psychological treatment to the victim through the State's health services, including the provision of free medication" (*supra* having seen paragraph 1).

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Court's Statute, and Articles 31(2) and 69 of the Rules of Procedure of the Court,

DECIDES TO:

1. Postpone making a final decision on the request for provisional measures submitted by the representative of the victim to the benefit of Ms. De La Cruz Flores until the requested information, which must be forwarded by March 30, 2012, is received, in accordance with considering paragraph 12 of this Order.
2. Ask the Secretariat of the Court to notify this Order to the State of Peru, the Inter-American Commission on Human Rights, and the representative of the victim.

⁵ Cf. *Case of Velásquez Rodríguez*. Provisional Measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph; *Matter of Belfort Istúriz et al.*, Provisional Measures with regard to Venezuela. Order of the Court of April 15, 2010, twenty-second considering paragraph, and *Matter of Four Ngöbe Indigenous Communities and its Members*, Provisional Measures with regard to Panama. Order of the Court of May 28, 2010, eighteenth considering paragraph.

Manuel E. Ventura Robles
Acting president

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel E. Ventura Robles
Acting president

Pablo Saavedra Alessandri
Secretary