

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS *
OF JULY 4, 2006**

**PROVISIONAL MEASURES REGARDING VENEZUELA
MATTER OF MARTA COLOMINA AND LILIANA VELÁSQUEZ**

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on September 8, 2003.
2. The Order issued by the Tribunal on December 2, 2003.
3. The Order issued by the Court on May 4, 2004 in the Matters of Liliana Ortega *et al.*, Luisiana Ríos *et al.*, Luis Uzcátegui, and Marta Colomina and Liliana Velásquez.
4. The report of the State of Venezuela (hereinafter, "the State" or "Venezuela"), dated December 17, 2004, wherein the State asserted that:
 - a) on June 27, 2003, the Office of the Attorney General opened an investigation of the facts that led to the adoption of these measures. Such investigation included "the questioning of witnesses, an eye inspection of the vehicle owned by Marta Colomina, the gathering of evidence at the scene and mapping tasks," and
 - b) since the date on which the measure of protection was ordered, the beneficiaries have not yet notified the Office of the Attorney General of any complaints regarding compliance with such measure.
5. The submission of comments by the representatives of the beneficiaries of the provisional measures (hereinafter, "the representatives") of February 16, 2005, whereby, after obtaining a deadline extension, they noted, *inter alia*, that:
 - a) two years after the facts that led to the adoption of the provisional measures, the four prosecutors of the Office of the Attorney General appointed to the case have only managed to "maintain the complaint at the

• Judge Oliver Jackman advised the Court that, due to reasons of *force majeure*, he would be unable to be present at the deliberations on and signing of this Order.

investigation stage." "There have been no significant occurrences in such investigation; there are no suspects or new investigation procedures, the beneficiaries have not been kept informed about the progress made in the investigation or summoned to the Prosecutor's Office for any purpose whatsoever;"[...]

b) the ruling of Court No. 42 was not in compliance with the order of the Inter-American Court and the notices delivered to the beneficiaries are unrelated to the protection prescribed in the Court's orders;

c) journalist Liliana Velásquez has received no form of police protection at all. Colomina is still under the protection of the Municipality of Chacao, which is a limited form of protection given the unavailability of human and economic resources in said Municipality, and

d) "the State has failed to comply with its obligation to effectively implement the measures to protect the freedom of expression of [the beneficiaries]." For instance, "the Minister of Defense described her as an 'alien,' the National Assembly requested the Office of the Attorney General to initiate the procedure for revoking her Venezuelan nationality, the Minister of Information made a telephone call to her radio show, while she was on the air, demanding that she let him directly say what he needed to say to her on the air [and] the media [have] reported that her [television] show will be cancelled due to pressure from the government."

6. The February 28, 2005 observations submitted by the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission"), whereby the Commission noted, *inter alia*, that the protection and investigation measures do not meet the standard set by the Court, that they are exactly the same as noted on previous reports and which the Court has considered ineffective for the protection of the life, personal integrity and freedom of expression of the beneficiaries.

7. The March 11, 2005 communication from the representatives, and the appendixes thereto, whereby they argued, *inter alia*, that the top executive officer of the "Televen" television channel informed Colomina "of the channel's Board of Directors' decision to let her go and cancel her show," given that "the pressure that several Government ministers had exerted for over one year had become intolerable as far as the channel's operation was concerned, which is why it was impossible to keep 'La Entrevista,' the show that Marta Colomina had hosted with the assistance of producer Liliana Velásquez for over nine years, on the air."

8. The State's brief of May 2, 2005, whereby it provided information on the proposal for the creation of a "Special Team" to coordinate and supervise compliance with the provisional and precautionary measures ordered by the Court and the Inter-American Commission.

9. The State's report of May 25, 2005 –filed after being granted two deadline extensions– wherein it stated, *inter alia*, that:

- a) Colomina is protected round the clock by two officers of the Municipal Police Department of Chacao, given her refusal to be placed under the protection of officers of the *Dirección de Servicio de Inteligencia y Prevención* (DISIP) (Intelligence and Prevention Service). At no time has she been left unprotected and no payment whatsoever is made on that account;
- b) the beneficiaries "have not provided any information conducive to the identification of the perpetrators, or sketches, or identification at lineups, [...] [in addition to the fact] that the *modus operandi* of the perpetrators prevented any fingerprints from being lifted;"
- c) the beneficiaries altered the crime scene, preventing the gathering "of evidence leading to the identification of the perpetrators" by specialists from the State's security forces;
- d) the beneficiaries "have not shown any interest in the public and oral hearings at which their presence had been requested by both the Prosecutor's Office and the courts in order that they would express their concerns and needs regarding the implementation of such measures[...]," "which, by itself, suggests that the situation of impending danger is no longer such;"
- e) "the facts that led to the adoption of the measures of protection took place amidst a state of social upheaval," and
- f) Marta Colomina "is intentionally exaggerating in order to create [...] the impression in the Court that she is the victim of political persecution." This was the case with the threat allegedly made by the Minister of Communications and Information, Andrés Izarra, through a telephone call to Marta Colomina's radio show.
10. The July 8, 2005 submission of comments by the representatives, which they filed after obtaining a deadline extension and whereby they asserted, *inter alia*, that:
- a) the State failed to comply with its obligation to conduct an exhaustive, conclusive investigation of the facts that are the subject-matter of this case. The State attempts to justify such failure, but the beneficiaries "were never actually called upon to testify by the Prosecutor's Office, and never were they asked to appear before expert artists to have a sketch drawn up," and
- b) through its own courts, the State is seeking to substitute the provisional measures with measures of protection provided for in its own domestic laws, so as to avoid direct compliance with the provisional measures ordered by the Court.
11. The July 14, 2005 letter from the Secretariat, whereby the parties were notified that, given that the representatives' communication of July 8, 2005 and the State's brief of May 25, 2005 contained expressions and labels that are unnecessary in the context of international jurisdiction, further to the President's instructions they were invited to refrain from using that kind of remarks.

12. The comments submitted by the Inter-American Commission on July 29, 2005, whereby the Commission stated, *inter alia*, that:

- a) it acknowledged that Marta Colomina is currently under the protection of a State security agency; however, such protection is deficient, "given that the specific form of protection has not been agreed upon with the beneficiaries and their representative." Furthermore, the State is not in compliance with its duty to provide protection to Liliana Vásquez;
- b) the mechanism for compliance with provisional measures "may only be implemented [...] in consultation with the beneficiaries and their representatives." Accordingly, it insisted on the need for the State to make its best efforts to hold a meeting with the beneficiaries for planning purposes, and
- c) in the proceeding for provisional measures, it will not analyze the conclusions arrived at by the State regarding the investigation of the facts that led to the measures, "which pertains to the examination of the merits of the matter, to be dealt with at the appropriate stage of case No. 519/03, which is currently pending before the Commission."

13. The September 9, 2005 report by the State and the appendixes thereto, wherein the State noted, *inter alia*, that:

- a) the crime perpetrated against the beneficiaries is a hard one to solve, because of the crowd that was involved in it and because the evidence left at the scene was altered, as evidence was manipulated and gathered by non-expert persons disregarding the applicable statutory requirements. The case of Ms. Colomina was discontinued without prejudice because the investigation stage did not produce sufficient evidence to prosecute;
- b) "[it w]ill continue to investigate until the facts are fully cleared up," in spite of the aforementioned difficulties. Furthermore, it invited Marta Colomina and Liliana Velásquez to provide the Office of the Attorney General with any information that would be of value in furthering such investigation;
- c) the beneficiaries of the measures did not attend the hearings called by the investigating courts, which are in charge of implementing the protection measures. "[T]he failure to appear [...] inevitably leads to the assumption that they have already given up on the enforcement of such measures or that the danger leading to such measures is now over;"
- d) the beneficiaries' representatives have misstated the facts by claiming that "the beneficiaries never provided a statement" to State authorities. A police Commission was sent to the "Televen" television channel's building, where it interviewed Liliana Velásquez and Marta Colomina, as well as several witnesses, and
- e) in this case there are no multiple, consistent indications to assume that a serious threat exists against Marta Colomina and Liliana Velásquez.

14. The November 24, 2005 submission of comments by the representatives, and the accompanying appendixes, filed after being granted a deadline extension, whereby the representatives stated, *inter alia*, that:

- a) it is "unnecessary to maintain the provisional measures in force" for the protection of Liliana Velásquez, insofar as the danger situation has already ended, as she is no longer working with Marta Colomina. Accordingly, they requested that the Court rescind the measures;
- b) they have refused to appear before national courts because these "seek to avoid compliance with the measures ordered by the Court;"
- c) the need to maintain the provisional measures ordered for the benefit of Colomina in place is proven by the violent events that took place after such measures had been ordered, including "assault with an explosive device," death threats, and "the posting of her picture at different locations in Caracas, making her out to be an enemy of the revolution." Furthermore, there has been instigation to violence against her;

15. The December 2, 2005 comments, whereby after being granted a deadline extension, the Inter-American Commission noted, *inter alia*, that:

- a) it considers that "it is appropriate for the Court to rescind the provisional measures ordered for the benefit of [Liliana] Velásquez;"
- b) the State has not provided information regarding which measures it has actually adopted to protect the beneficiaries' freedom of expression, and
- c) it is legitimate for the State "to get its own courts involved in its efforts to comply with the provisional measures," and it considers that the impasse caused by Colomina's failure to appear at the judicial planning hearings to which she was apparently summoned "should be put behind through the parties' willingness to hold an initial meeting to express their opinions and positions on the design of the measures."

16. The January 13, 2006 communication from the Commission, whereby it provided "some additional considerations on the State's request "regarding the rescission of the measures," and stated that where the Court "has verified that a risk situation exists, it is the State who has the burden of proving that such risk has been removed. This is the only test, [...] through which their rescission can be justified."

17. The State's report of January 24, 2006, whereby, *inter alia*, it stated that:

- a) "while awaiting for the truth to be discovered, the State has, through its national courts, implemented whatever measures [it has] deemed necessary to safeguard the life and physical integrity of the petitioners;"

b) "the evidence relied on by the beneficiaries' representatives to argue that [the facts that caused the measures to be ordered] have been duly proven are based, mainly, on media reports," and

c) all of the facts raised by the representatives in support of these measures "took place [...] within the same timespan, and thus it can be said that the beneficiaries have already enjoyed almost three years without their [...] lives [...] being in impending danger, a contingency that does not materialize by the mere occurrence of a few people throwing flyers against [...] Marta Colomina out on the street."

18. The April 10, 2006 comments of the representatives and the appendixes thereto, whereby they stated, *inter alia*, that:

a) "the mere passing of time is not sufficient to assert that the extreme gravity of the threat has already subsided;"

b) The State has not clearly indicated which measures it has adopted to comply with the Tribunal's Orders, and

c) The representatives were summoned by and appeared before "*Tribunal 42º de Primera Instancia en Función de Control del Circuito Judicial Penal del Área Metropolitana de Caracas*" (Forty-Second Investigating Lower Court for the Criminal Judicial Circuit of the Caracas Metropolitan Area) and insisted on the fact that the measures of protection were mandatory and that such court was not in charge of controlling, modifying or suspending the measures or their enforcement.

19. The April 21, 2006 comments of the Inter-American Commission, wherein it stated, *inter alia*, that:

a) "in its report the State has failed to indicate which measures of protection it has currently in place for the benefit of the beneficiaries;"

b) Venezuela has not supplied information regarding the duty to have the beneficiaries involved in the implementation of the provisional measures;

c) the information submitted shows that the investigations have not been reopened and that "solving the case [...] is a necessary step towards removing the risk," and

d) noticed, based on the appendixes to the representatives' communications, that the image of Marta Colomina is being shown on television, and she is being described as a fascist, pro-coup enthusiast, a terrorist and an enemy of the revolution, which is cause of concern. It believes that the State should view such occurrences "as possible elements of risk." Furthermore, it argued that the risk cannot be said to have been eliminated, which is why it requested that the Court order that the measures be maintained in force.

20. The April 24, 2006 letter from the Secretariat, whereby it requested that the State “clarify whether the images submitted by the beneficiaries on video or in the appendix to their latest comments were broadcasted by a state TV channel, and whether they are currently shown on the air.”

CONSIDERING:

1. That Venezuela has been a State Party to the American Convention on Human Rights (hereinafter, “the Convention” or the “American Convention”) since August 9, 1977, and that, pursuant to Article 62 thereof, it recognized the jurisdiction of the Court on June 24, 1981.
2. That Article 63(2) of the American Convention provides that in cases of “extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may, in matters not yet submitted to the Court, adopt such provisional measures at the Commission’s request as it may deem pertinent.
3. That in the International Law of Human Rights, provisional measures are not only precautionary to the extent that they maintain the legal *status quo*, but also and essentially they are protective in nature, as they protect human rights, insofar as they are intended to avoid irreparable damage to persons. Provided that the basic requirements of extreme gravity and urgency and prevention of irreparable damage to persons are met, provisional measures become a true preventive judicial guarantee.¹
4. That it is essential for provisional measures to remain in full force and produce effects until such time as they are rescinded by the Tribunal and the State is notified of the Court’s decision in this regard.
5. That provisional measures are extraordinary in nature and ordered based on the need for protection and, once ordered, they must remain in place, provided, however, that in the Court’s view the basic requirements of extreme gravity and urgency and prevention of irreparable damage to the beneficiaries continue to be satisfied.
6. That under Article 63(2) of the Convention, the State’s adoption of such provisional measures as may be ordered by the Tribunal is mandatory, since the fundamental principle of the law on international responsibility of the State, as supported by international case law, mandates that States should comply with their contractual obligations in good faith (*pacta sunt servanda*).²

¹ Cf. *Matter of the Forensic Anthropology Foundation (Guatemala). Provisional Measures*. Order of the President of the Inter-American Court of Human Rights of April 21, 2006, Considering clause No. 5; *Case of “19 Tradersmen.” Provisional Measures*. Order of the Inter-American Court of Human Rights of April 28, 2006, Considering clause No. 8; *Matter of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison)*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering clause No. 5.

² Cf. *Matter of the Communities of Jiguamiandó and Corbaradó*. Provisional Measures. Order of the Inter-American Court of Human Rights of February 7, 2006, Considering clause No. 7; *Matter of the Peace Community of San José de Apartadó*. Provisional Measures. Order of the Inter-American Court of Human

7. That, pursuant to the Orders of the Court (*supra* Having Seen clauses No. 1, 2 and 3), the State is required to: adopt measures to protect the life, physical integrity and freedom of expression of Marta Colomina and Liliana Velásquez; investigate the facts that led to the adoption of the provisional measures in order to identify and punish the perpetrators; involve the beneficiaries or their representatives in the planning and implementation of the measures of protection and keep them current on any progress made regarding the measures ordered by the Court; and provide the Court with the required reports.

8. That, as far as the implementation of any provisional measures that may have been ordered is concerned, the respondent States are required to adopt all steps required for the effective protection of the measures' beneficiaries, further to the instructions of the Court. This obligation includes the duty to report to the Tribunal, as often as the Tribunal may indicate, on the implementation of such provisional measures.

9. That the duty to report to the Tribunal is not met through the mere formal submission of a document to the Court, but is a dual obligation the effective fulfillment of which calls for the formal submission of a document within the period prescribed therefor, and a material reference that is specific, accurate, current and detailed, to the issues around which such obligation revolves.³

10. That the State has failed to submit a report every two months concerning compliance with the provisional measures, pursuant to the Orders that the Court has issued in the instant case (*supra* Having Seen clauses No. 1 and 2). Accordingly, after the Tribunal's Order of May 4, 2004 (*supra* Having Seen clause No. 3), the State has submitted only four reports on compliance with the provisional measures (*supra* Having Seen clauses No. 4, 9, 13 and 17). Furthermore, the State has merely rebutted the briefs submitted by the Inter-American Commission and the representatives, without providing specific, current information regarding the measures actually adopted to protect the life, physical integrity and freedom of expression of the beneficiaries.

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11. That the hearing held on April 7, 2006 before the Forty-Second Investigating Lower Court for the Criminal Judicial Circuit of the Caracas Metropolitan Area constitutes a positive step towards reaching an agreement on the design and implementation of the measures of protection ordered by the Court, on the understanding that it would be inadmissible to subject the mechanism provided for in

Rights of February 6, 2006, Considering clause No. 7; *Matter of Luisiana Rios et al. (Radio Caracas Televisión -RCTV-)*. Provisional Measures. Order of the Inter-American Court of Human Rights of September 12, 2005, Considering clause No. 23.

³ Cf. *Matter of the Communities of Jiguamiandó and Corbaradó*. *supra* note 2, Considering clause No. 16; *Matter of the Peace Community of San José de Apartadó*. *supra* note 2, Considering clause No. 18; *Matter of Luisiana Rios et al.* *supra* note 2, Considering clause No. 17.

the American Convention to restrictions rendering the Tribunal's function and, thus, the system of protection of human rights embodied in the Convention inoperative.⁴

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12. That, as regards the information provided by the State concerning the possibility of creating a "Special Team to coordinate and supervise compliance with the provisional measures" (*supra* Having Seen clause No. 8), the Court will insist that the implementation and planning of provisional measures is to be entrusted to the appropriate state authorities, who are required to involve the beneficiaries or their representatives in order that the measures are carried out in a diligent, effective manner.⁵

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13. That the representatives have insisted on arguing that the State failed to comply with its obligation to conduct an exhaustive, conclusive investigation of the facts that led to the provisional measures in the instant case, which facts are the subject matter of a decision to "discontinue without prejudice" the investigation opened by the Office of the Attorney General.

14. That the Inter-American Commission stated that in this proceeding for provisional measures it will not analyze the conclusions reached by the State on the subject of the investigation of the facts, as this is an issue pertaining to the merits that will be dealt with at the appropriate stage of case No. 519/03, which is currently pending before the Commission.

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15. That the State requested that the Court rescind the provisional measures on the grounds that the beneficiaries are no longer in a situation of danger or threat. Moreover, both the Commission and the representatives requested that the Court maintain such measures in place as there is no reason whatsoever to believe that the risk of irreparable damage has been removed.

16. That the State argued that three years have elapsed throughout which the lives of the beneficiaries have not been in impending danger; however, the beneficiaries reported that, in addition to the physical attacks perpetrated three years ago, the continued threats against Colomina through flyers and telephone calls, among other actions, show that the risk remains current.

17. That, as per the information submitted by the representatives, Colomina is being protected by two police officers of the Municipality of Chacao, such protection

⁴ Cf. *Matters of Lilibiana Ortega et al., Luisiana Ríos et al., Luis Uzcátegui, Marta Colomina and Lilibiana Velásquez*. Order of the Inter-American Court of Human Rights of May 4, 2004; *Matter of Luis Uzcátegui. Provisional Measures*. Order of the Inter-American Court of Human Rights of February 20, 2003, No. 13.

⁵ Cf. *Matter of Lilibiana Ortega et al. Provisional Measures*. Order of the Inter-American Court of Human Rights of June 14, 2005, Considering clause No. 11.

being irregular in nature given the Municipality's unavailability of sufficient economic and human resources.

18. That the Court does not have current, specific information on the form and regularity of, and other circumstances pertaining to, the protection that is being afforded to Colomina by the Municipality of Chacao, or the existence of any other measure that may have been implemented to protect the life and integrity of this beneficiary.

19. That the State has failed to provide the information that was requested by the Secretariat, further to the instructions of the President of the Court (*supra* Having Seen clause No. 20), clarifying whether the images of the beneficiaries featured on the video recording that the representatives provided to the Tribunal (*supra* Having Seen clause No. 14) were broadcasted by a state TV channel and whether they are currently receiving air time.

20. That, in spite of the fact that, according to the representatives, the State has failed to adopt measures aimed at protecting the life and physical integrity of Liliana Velásquez, the representatives requested that the provisional measures ordered for her protection be rescinded given that the situation of risk had already ceased to exist as far as she was concerned, as she was no longer working with Colomina.

21. That both the Commission and the State endorsed such request that the measures be rescinded.

22. That the Court does not have information on whether the State has adopted any measure aimed at protecting the freedom of expression of Colomina.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority vested upon it by Article 63(2) of the American Convention on Human Rights and Article 25 of the Rules of Procedure,

DECIDES:

1. To declare that the State has failed to comply with its duty to provide specific and detailed information to the Inter-American Court of Human Rights regarding the implementation of the measures ordered by the Court.

2. To rescind these provisional measures insofar as they relate to Liliana Velásquez.

3. To call upon the State, once again, to immediately adopt such measures as may be required in order to protect the life, physical integrity and freedom of expression of Marta Colomina.

4. To insist that the State is required to continue to involve the beneficiary in the planning and implementation of the measures of protection and, in general, to keep her current on any developments in connection with such measures.
5. To declare that, in the context of these proceedings for provisional measures, it will not analyze the issues concerning the discontinuation without prejudice of the investigation of the facts that led to the adoption of these measures or the alleged negligence of the State in such investigation, as these are issues pertaining to the merits of the matter and, as such, they are to be dealt with at the appropriate stage of Case No. 519/03, which is currently pending before the Inter-American Commission on Human Rights.
6. To order that, no later than August 30, 2006, the State provide specific and detailed information to the Inter-American Court of Human Rights regarding the implementation and enforcement of the provisional measures adopted. Such report is to include the information requested by the Secretariat of the Court on April 24, 2006 (*supra* Having Seen clause No. 20).
7. To call upon the beneficiary of these measures or her representatives to submit their comments on the State's report within a period of four weeks as from receipt thereof. Such submission is also to include the beneficiary or the beneficiary's representatives' statement clearly specifying the acts of violence and threats perpetrated against her, as well as any action taken domestically in connection therewith, along with the appropriate supporting documents.
8. To call upon the Inter-American Commission on Human Rights to submit its comments to the State's report and the beneficiary's or the beneficiary's representatives' brief referred to in operative paragraphs Nos. 6 and 7 above, respectively, within a period of six weeks as from the date of receipt of the State's report.
9. To call upon the State to continue to report every two months to the Inter-American Court of Human Rights on the provisional measures adopted, in addition to the report referred to in operative paragraph number six.
10. To call upon the beneficiary of the provisional measures or her representatives and the Inter-American Commission on Human Rights to continue to submit their comments on such reports within a period of four and six weeks, respectively, as from the date of receipt of the reports.
11. To request that the Secretariat of the Court give notice of this Order to the Inter-American Commission on Human Rights, the representatives of the measures' beneficiaries and the State.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary