

**Order of the
Inter-American Court of Human Rights^{*}
of November 21, 2007
Provisional Measures regarding Venezuela

Matter of the "Globovisión" Television Station**

HAVING SEEN:

1. The Order issued by the President of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of August 3, 2004, in which, in consultation with the judges of the Court, he decided:

1. To require the State to adopt, forthwith, all necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the Globovisión journalists, management and employees, and of other persons who are on the premises of this medium or who are directly linked to the journalistic operations of this medium.

2. To require the State to adopt, forthwith, all necessary measures to provide protection to the perimeter of the offices of the social communication medium, Globovisión.

3. To require the State to investigate the facts that gave rise to the adoption of the [...] measures, in order to identify those responsible and impose the corresponding sanctions.

4. To require the State to allow the representatives of the beneficiaries of these measures to take part in the planning and implementation of the measures and, in general, to keep them informed about progress in the measures ordered by the President of the Inter-American Court of Human Rights.
[...]

8. To require the State to report to the Inter-American Court of Human Rights, every two months, on compliance with the measures adopted, and to require the representatives of the beneficiaries of these measures to submit their observations on the bi-monthly reports of the State, within one month of receiving them, and the Inter-American Commission on Human Rights to submit its observations on these State reports within six weeks of receiving them.
[...]

2. The Order of the Court of September 4, 2004, in which it decided:

1. To ratify all aspects of the Order of the President of the Inter-American Court of Human Rights of August 3, 2004, [...] and, consequently, to require the State to maintain any measures it had adopted and to adopt, forthwith, all necessary measures to comply with the measures decided in the said Order.

2. To require the State to continue investigating the facts that gave rise to the adoption of these measures in order to identify those responsible and impose the corresponding sanctions.

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Judge Diego García-Sayán excused himself from taking part in the deliberation and signature of this Order.

3. To require the State to allow the representatives of the beneficiaries of these measures to take part in the planning and implementation of the measures and, in general, keep them informed about progress in the measures ordered by the Inter-American Court of Human Rights.

4. To require the State to continue reporting to the Inter-American Court of Human Rights, every two months, on compliance with the measures adopted.

5. To require the representatives of the beneficiaries of these measures to submit their observations on the bi-monthly reports of the State, within one month of receiving them, and the Inter-American Commission on Human Rights to submit its observations on these State reports within six weeks of receiving them.

[...]

3. The reports presented by the State of Venezuela (hereinafter "the State" or "Venezuela"), the respective observations of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and of the representatives of the beneficiaries (hereinafter "the representatives") on those reports, and the briefs submitted by the Commission and the representatives from November 2004 to November 2007, in the context of the provisional measures ordered by the Court.

4. The application lodged by the Inter-American Commission against Venezuela on April 12, 2007, without the attachments, and on May 4, 2007, with the attachments, concerning the case of Gabriela Perozo *et al.* (No. 12,442).

5. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of May 11, 2007, in which it notified the said application to the parties.

6. The brief with requests, arguments and evidence in the case of Gabriela Perozo *et al.* (No. 12,442) submitted by the representatives of the alleged victims on July 12, 2007.

7. The brief filing preliminary objections, answering the application, and with observations on the brief with requests, arguments and evidence in the case of Gabriela Perozo *et al.* (No. 12,442) submitted by the State on September 11, 2007, without the attachments, and on September 18, 2007, with the attachments.

8. The brief of October 23, 2007, and the attachments, in which the representatives of the beneficiaries of the provisional measures, "on their own behalf, and on behalf of all the journalists, management, and other employees of Globovisión," requested, *inter alia*, that the "content [of the said provisional measures] be expanded." The representatives based their request on the following alleged facts:

(a) "The verbal attacks [against journalists, management and employees of Globovisión] by public authorities and officials and by Government supporters through the official media or media that are totally identified with the party in power, that have sought to create a climate hostile to the exercise of [their] freedom of expression [...], thus encouraging followers and supporters of official Government policies to carry out physical attacks on [them ...], in order to intimidate them and censor them." They also reported that the Globovisión journalist, Ana Karina Villalba, had received death threats by telephone;

(b) "The abusive use of messages broadcast on the national radio and television network by the President of the Republic." In this regard, they alleged "that, based on regulations contained in both the Telecommunication Act and the Radio and Television Social Responsibility Act, the radio and audio-visual media are obliged to

transmit, jointly and without any time limit, all the official speeches or messages that the National Executive Branch (the President of the Republic, the Vice President, and Ministers) consider it opportune to address to the population. [...] This constant interruption of the regular programming of the audio-visual media by the Government has unquestionably become a threat to freedom of expression”;

(c) “The imposing of Government propaganda by the Venezuelan State in violation of article 10 of the Radio and Television Social Responsibility Act.” They indicated that this article establishes that “it is not permitted to use these spaces to broadcast the publicity or propaganda of State organs and entities”; despite this, the State has been failing to observe this provision, obliging Globovisión to transmit messages that are clearly official publicity;

(d) “The indirect pressure and censure exercised by the Venezuelan State by not offering Globovisión contracts for official publicity.” They stated that situations such as those described have been recognized by the Inter-American Commission on Human Rights as indirect pressure on the exercise of freedom of expression; and

(e) “The indirect pressure exercised by the State by failing to grant the concessions and permits requested by Globovisión to expand its coverage.” In this regard, they reported that CONATEL has delayed issuing any decision on such requests without any justification, even though Globovisión has presented all the necessary supporting documents.”

In this brief, the representatives asked the Court, *inter alia*, to reiterate to the State the provisional measures that had been ratified, and to order the State to adopt the following provisional measures:

[...] 9. To require the State to abstain from addressing verbal attacks and other confrontational expressions, through its senior officials, against the media, their journalists, employees and management and, in particular, against Globovisión, in order to avoid the acts of intimidation and physical attacks against the petitioners resulting from this incitement.

10. To require the State to avoid the abusive and unnecessary use of the mechanisms for broadcasting official messages through the national radio and television network, to prevent this mechanism becoming a means of censoring the media.

11. To require the Venezuelan State to abstain from carrying out discriminatory practices designed to obstruct the access of the private media and, particularly, Globovisión, to news from official sources.

9. The note of the Secretariat of October 30, 2007, in which, on the instructions of the President, it granted the parties until November 14, 2007, to forward any observations they deemed pertinent on the brief of the representatives (*supra* Having seen paragraph 8), “in particular, concerning the request for expansion of the measures.”

10. The brief of November 14, 2007, in which the Inter-American Commission, in response to the request made in the note of the Secretariat of October 30, 2007, forwarded its observations on the request for the expansion of the measures submitted by the representatives. The Commission stated, *inter alia*, that “most of the measures requested by the representatives of the beneficiaries in its request for their expansion related to the State’s obligation to safeguard and protect the life, personal integrity and freedom of expression of the beneficiaries, and that, based on its content, it constitutes a reiteration of the measures that the Court has already ordered and that are still in force.”

11. The communication of November 14, 2007, in which the State, in response to the request made in the Secretariat's note of October 30, 2007, forwarded its observations on the brief of the representatives de October 23, 2007, and asked the Court, *inter alia*, to "rescind the provisional measures ordered [...and to] declare that the request for expansion of the measures was inadmissible."

CONSIDERING:

1. That the State ratified the American Convention on August 9, 1977, and, pursuant to Article 62 thereof, accepted the compulsory jurisdiction of the Court on June 24, 1981.

2. That Article 63(2) of the Convention establishes that:

In 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. That, in this regard, paragraphs 1 and 2 of Article 25 of the Court's Rules of Procedure establish that:

At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

[...]

With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. That Article 1(1) of the Convention embodies the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. That the provisional measures decreed in the Order of the Court on September 4, 2004 (*supra* Having seen paragraph 2) are still in force.

6. That, following the said order for provisional measures, the Inter-American Commission lodged an application before the Inter-American Court for the Court to establish the alleged responsibility of the State for the violation of the rights to freedom of expression, a fair trial, and judicial protection of 44 persons, and of the right to humane treatment of six persons. These people are also beneficiaries of the provisional measures already ordered by the Court (*supra* Having seen paragraphs 2 and 4).

7. That, on October 23, 2007, the representatives submitted to the Court a request for the expansion of the content of the provisional measures that had been ordered (*supra* Having seen paragraph 8), and on November 14, 2007, the State requested that the measures be rescinded (*supra* Having seen paragraph 11). The Court will refer, first, to the request to rescind the provisional measures that the State was ordered to adopt and, second, to the said request to expand their content.

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Request to rescind the provisional measures ordered by the Court

8. That, regarding the obligation to adopt all necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the beneficiaries, the representatives indicated that these measures “had not been implemented by the State, because, even though there are some judicial measures that are designed to protect the Globovisión premises and some of its journalists, these measures are not effective[, because] the physical and moral attacks on the journalists and other employees of Globovisión continue.” In this regard, they have reported alleged physical attacks on the television station’s reporters and employees during 2006 and even 2007, by persons wearing clothing identifying them as belonging to the party in power,” by “members of the Honor Guard of the Presidential Guard,” and by individuals “in the presence of members of the National Guard,” among others. In addition, they provided information on alleged verbal attacks by Government supporters and public officials against Globovisión journalists, management and employees. They also stated that, during a November 2006 meeting with the representatives of the State, they had insisted on the need to implement rapid response mechanisms for the protection of journalists outside the television station’s offices, but the State had not provided an effective response to this request. Meanwhile, the Commission underscored that it had no information about the urgent protection mechanism agreed upon during the above-mentioned meeting and requested the State to provide information on its design and implementation.

9. That the State has affirmed that “from the start, the corresponding protection has been provided by means of the patrols carried out by members of the Caracas Metropolitan Police”; that the Office of the State’s Human Rights Agent has remained in permanent contact with the State’s security agencies to ensure that the provisional measures are complied with as effectively as possible; also, that it had taken different steps before the police authorities to safeguard Globovisión personnel and had informed the company’s legal adviser, Ana Cristina Núñez, of the results of these steps. It also indicated that, in March 2007, a meeting had been held with the Globovisión legal adviser to determine the alleged shortcomings that had arisen in the implementation and monitoring of the mechanisms to protect the Globovisión premises and employees. Regarding “the reports of verbal attacks on journalists [...] and other [Globovisión] employees allegedly made by Government supporters and public officials from 2001 to 2006,” the State indicated that “the Attorney General’s Office had entrusted the matter to the thirty-fourth Prosecutor’s office, which, on December 12, 2006, ordered the opening of the corresponding criminal investigation, and this is currently underway.”

10. That, regarding the obligation to adopt all necessary measures to provide protection to the perimeter of the Globovisión offices and the obligation to allow the representatives of the beneficiaries of the measures to take part in planning and implementing the measures, the representatives indicated that it was only on November 30, 2006, as a result of a first meeting with the State representatives State held two weeks previously, that four Metropolitan Police agents were stationed at the doors of the television station. Nevertheless, they alleged that this protection has been irregular and, at most, two of the four agents appointed to protect the offices are on duty. The State acknowledged the existence of shortcomings in this service and reported that it had sent communications to the Director General and the Head of the Caracas Metropolitan Police, among others, so as to improve the provision of security services to the Globovisión employees, in compliance with the Court’s Order. In its report of June 25, 2007, the State indicated that, on May 28,

2007, the Director of Legal Advisory Services of the Metropolitan Police reported that the legal mandate issued by the Court to safeguard the premises of the television station had been complied with meticulously. In its most recent brief of November 14, 2007, the State reported that, on February 6, 2007, the Deputy Chief of Police of the Metropolitan Police met with the Globovisión legal adviser at the Globovisión offices and made a series of recommendations to the television station. In this regard, it indicated that "if the representative of the alleged victims (*sic*) is truly concerned about the effective protection of the safety of the television station and its employees, she should have adopted the recommendations of the security agency immediately [...; however,] this was not done, given that there is no interest in improving the service and the security; but rather a clear intention of using the system's mechanisms and agencies for political ends."

11. That it should be stressed that meetings have been held and written communications exchanged between the beneficiaries and the State in order to implement the protection measures. Also, the Court appreciates the willingness shown by the State to work together with the beneficiaries in planning and implementing the provisional measures, as well as the posting of State security agents outside the Globovisión offices. Nevertheless, according to the representatives' allegations, specific acts of violence against the beneficiaries continue. The information that the parties have provided to the Court does not show that the circumstances that gave rise to the adoption of these provisional measures have ceased; hence, it is not appropriate to order that they be rescinded at the present time. Consequently, the State must continue to adopt the appropriate and necessary measures to safeguard and protect the life, personal integrity, and freedom of expression of the beneficiaries of these provisional measures, especially when they carry out journalistic activities outside the station's offices, the circumstances in which, according to the reports received, the most recent alleged physical attacks have occurred. The means and coverage of this protection must respond to the requirements of the circumstances, and be adapted, insofar as possible, to the need to protect the life, personal integrity, and freedom of expression of the beneficiaries and to the specific situations that occur. In this regard, the Court urges the beneficiaries and the State to collaborate in order to take into account the recommendations made by the State's security agency, and the concerns and proposals of the representatives of the beneficiaries, and to design jointly the means by which the measures of protection are provided.

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Request to expand the content of the provisional measures ordered by the Court

12. That the facts indicated as grounds for the representatives' request of October 23, 2007 (*supra* Having seen paragraph 8) include the alleged "verbal attacks [by] public officials and authorities and by Government supporters [against Globovisión journalists, management and employees,] encouraging followers and supporters of official Government policies to carry out physical attacks on [them ...], in order to intimidate them and censor them"; the alleged "abusive use of messages on the national radio and television network" by public officials; "the imposing of Government propaganda by the Venezuelan State in violation of article 10 of the Radio and Television Social Responsibility Act"; "the indirect pressure and censure exercised by the Venezuelan State by not offering Globovisión contracts for official publicity," and "the indirect pressure exercised by the State by failing to grant the concessions and permits requested by Globovisión to expand its coverage." The representatives allege that these facts constitute a threat to the alleged victims' freedom of expression.

13. That, as indicated in the Order issued in Matter of the “Globovisión” Television Station v. Venezuela (*supra* Having seen paragraph 2), when the Court decreed the adoption of the provisional measures, the said protection of the freedom of expression was determined in direct relation to the danger to life and personal integrity as a result of the alleged threats and attacks against the beneficiaries of the measures.

14. That, in the case of requests for provisional measures, the Court must only take into consideration those arguments that are strictly and directly related to extreme gravity, urgency and the need to avoid irreparable damage to persons. Any other fact or argument can only be considered and decided by the Court when considering the merits of a contentious case.¹

15. That, in this case, it is not possible to determine *fumus boni iuris* without making a ruling on the merits of the matter in question, which would imply an assessment of whether the facts alleged by the representatives are in conformity with the American Convention. A decision on merits is made in a judgement delivered in the course of the proceedings on a contentious case lodged before the Court, and not while processing provisional measures. The adoption of the requested measures could imply an incidental prior judgment, with the consequent establishment of some of the facts and their respective consequences, and these are the object of the principal dispute in the case lodged before the Court.² Therefore, it is not appropriate to order the requested expansion of the content of the measures (*supra* Having seen paragraph 8), in the terms of Article 63(2) of the Convention

16. That this Order does not prejudge the existing dispute between the parties in the case of Gabriela Perozo *et al.*, or the matters described in the said request.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

¹ Cf. *Matter of James et al. v. Trinidad and Tobago*. Provisional measures with regard to Trinidad and Tobago. Order of the Court of August 20, 1998, sixth considering paragraph; *Matter of Castañeda-Gutman v. Mexico*. Provisional measures with regard to Mexico. Order of the Court of November 25, 2005, eighth considering paragraph; *Case of Juan Humberto-Sánchez v. Honduras*. Provisional measures with regard to Honduras. Order of the Court of February 7, 2006, seventh considering paragraph, and *Matter of Luisiana Ríos et al. v. Venezuela* Provisional measures with regard to Venezuela. Order of the Court of July 3, 2007, ninth considering paragraph. See also: *Case of Cesti-Hurtado v. Peru*. Provisional measures with regard to Peru. Order of the Court of September 11, 1997, fifth considering paragraph, and *Case Herrera-Ulloa v. Costa Rica*. Provisional measures with regard to Costa Rica. Order of the Court of September 7, 2001, eighth considering paragraph.

² Cf. *Matter of Castañeda-Gutman v. Mexico*. Provisional measures with regard to Mexico, *supra* note 11, sixth considering paragraph, and *Matter of Luisiana Ríos et al. v. Venezuela*. Provisional measures with regard to Venezuela, *supra* note 11, tenth considering paragraph.

1. To reject, the request for expansion of the provisional measures submitted on October 23, 2007 (*supra* Having seen paragraph 6), for the reasons set out in the twelfth to the sixteenth considering paragraphs.
2. To require the State to maintain the provisional measures decided in the Order of the Inter-American Court of Human Rights of September 4, 2004 (*supra* Having seen paragraph 2).
3. To notify this Order to the Inter-American Commission on Human Rights, the representatives of the beneficiaries of these measures, and the State.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary