

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS *
OF SEPTEMBER 1, 2011**

**REQUEST FOR PROVISIONAL MEASURES REGARDING
THE REPUBLIC OF GUATEMALA**

CASE OF GARCÍA AND FAMILY

HAVING SEEN:

1. The brief of the representatives of the alleged victims¹ (hereinafter the “representatives”) of July 26, 2011 and its attachments, in which they submitted to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) a request for provisional measures in accordance with Article 63(2) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Article 27 of the Court’s Rules of Procedure² (hereinafter “the Rules”), for the purpose of requiring the Republic of Guatemala (hereinafter the “State” or “Guatemala”) to protect the life and personal integrity of Mr. Luis Roberto Romero Rivera.

2. The alleged facts upon which the request for provisional measures submitted by the representatives is based, namely:

- a) since 2008 Mr. Romero Rivera has worked as the Director of the Special Investigations Unit at the Office of the Human Rights Ombudsman, the body “in charge of conducting investigations into cases of forced disappearances that occurred during the internal armed conflict in Guatemala”;
- b) Mr. Romero Rivera has worked on the investigation into the case of Mr. Edgar Fernando García. In those criminal proceedings “the perpetrators who participated in the unlawful detention and subsequent disappearance of Fernando García were identified and prosecuted, and were sentenced to a forty-year prison term.” The first instance ruling was confirmed in second instance. However, the decision in “[t]he case is not yet final, given that the defense still has to file some appeals.” The representatives also emphasized that a colonel has been arrested and “is awaiting trial.” Said colonel held the position of Director of the National Police at the time of the forced disappearance of Mr. García;
- c) as to recent events to the detriment of Mr. Romero Rivera, they emphasized that on July 21, 2011 “[at] approximately 09.30,” Mr. Romero Rivera and his assistant were “followed by two vehicles.” The representatives provided a description of those two vehicles. They added that the following day the Association of Military Veterans of Guatemala published a communiqué in the newspaper *La Prensa*

* Judge Leonardo A. Franco informed the Court that, for reasons of force majeure, he was unable to be present in the deliberation and signing of this Order.

¹ The alleged victims in this case appointed the *Grupo of Apoyo Mutuo* as their representative.

² Rules of Procedure of the Court approved on November 24, 2009, during its Eighty-fifth Regular Period of Sessions held on November 16-28, 2009, and in force since January 1, 2010.

Libre, expressing “its strong disagreement” with the arrest of the aforementioned colonel who was the Director of the National Police at the time of the facts of the case of *García and Family*. Likewise, in said communiqué they stated that they maintain “a great spirit of patriotism and [their] honor at all costs and, therefore, they war[n] that they are prepared to fight once again if circumstances require it”;

- d) as another recent fact, the representatives also mentioned that on the day prior to Mr. Romero Rivera being followed, “[t]he [...] assistant of the Special Investigations Unit was pursued by two vehicles, which he managed to identify”;
 - e) as to the events that occurred prior to 2011, they stated that in March 2009, Mr. Romero “was the object of threats”;
 - f) Mr. Romero Rivera was protected by provisional measures ordered by the Inter-American Court in the case of *Myrna Mack Chang*, in his capacity as lawyer of the plaintiff. This case resulted in the conviction of several high-ranking military officers, who subsequently escaped from prison. The State implemented these measures “by providing personal security through the National Civil Police, which assigned two officers who take turns to provide security for the lawyer Roberto Romero” ; and
 - g) through the Order of November 16, 2009 the Court lifted the provisional measures in favor of Mr. Romero Rivera. However, the State continued to provide protection measures until July 20, 2011 when the Special Investigations Unit was verbally informed about the lifting of the provisional measures “and consequently, the withdrawal of the security provided by the State of Guatemala through the National Civil Police.” Likewise, on July 12, 2011, the President of the Presidential Commission for the Coordination of the Executive Policy on Human Rights (COPREDEH) sent an official letter to the Vice Minister of Support to the Justice Sector, informing him about the lifting of the provisional measures in favor of Mr. Romero Rivera “for the purpose of coordinating the appropriate actions.”
3. The arguments used by the representatives to justify their request for provisional measures, including:
- a) regarding the gravity and urgency of the situation, the representatives, in addition to describing the alleged threats and persecution suffered (*supra* Having Seen 2), indicated that in Guatemala “prosecuting military officers is difficult due to impunity and the problems implied, such as intimidation, threats, and even more serious ones such as death”; and
 - b) regarding irreparable damage, they indicated that “[f]rom the foregoing, we can infer that a threat exists against the lawyer Luis Roberto Romero Rivera, and an imminent risk to his physical safety and, if these threats were carried out, [his] life would be in danger.”

4. The request of the representatives that the Court , based on Article 63(2) of the American Convention and Article 27 of its Rules of Procedure, “issue [provisional] measures to protect [the] life, [and] prevent irreparable damage, [... in favor of] the Lawyer Luis Roberto Romero Rivera”, and require the State to adopt the following measures:

To [...] fulfill its obligation to guarantee the life and physical integrity of the Lawyer Luis Roberto Romero Rivera, as established in the American Convention [on] Human Rights and the Political Constitution of the Republic of Guatemala.

To [submit a] full report on the security measures implemented to guarantee the safety and the life of the Lawyer Luis Roberto Romero Rivera, as well as [on] the progress made in the investigation to find those responsible for the death threats.

5. The note of July 27, 2011, in which the Secretariat of the Court, following the instructions of the President and pursuant to Article 27(5) of the Court's Rules of Procedure, asked the State to submit any observations deemed pertinent regarding the request for provisional measures, no later than August 7, 2011.

6. The brief of August 3, 2011, in which the State submitted its observations to the request for provisional measures. In its observations, Guatemala asked the Court to declare inadmissible the request for provisional measures, but also offered to provide "national protection to Mr. Luis Roberto Romero Rivera, with his prior consent and subject to the respective risk assessment, with mechanisms to guarantee the life, physical integrity and security of the petitioner."

7. The notes of August 5, 2011, in which the Secretariat of the Court, following the instructions of the President and in accordance with Article 27(5) of the Court's Rules of Procedure, granted the representatives and the State a period until August 22, 2011 to inform the Court whether Mr. Romero Rivera had agreed to the protection proposed by the State (*supra* Having Seen 6) and, if so, to indicate the results of the risk assessment and the security system offered. The Secretariat also required the representatives to present certain additional information. Furthermore, in these notes it indicated that, once that information was available, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") would be granted a period to submit any observations considered pertinent.

8. The brief of August 22, 2011, in which the State submitted the information required by the President of the Court through the note of the Secretariat of August 5, 2011 (*supra* Having Seen 7).

9. The brief of August 22, 2011 and its attachments, in which the representatives provided the additional information required by the President of the Court, through the note of the Secretariat of August 5, 2011 (*supra* Having Seen 7).

10. The note of August 24, 2011, in which the Secretariat of the Court, following the instructions of the President, and in accordance with Article 27(5) of the Court's Rules of Procedure, asked the representatives to submit, no later than August 26, 2011, their observations to the State's report of August 22, 2011 and, in particular, to inform the Court whether Mr. Romero Rivera had agreed to the protection plan offered by Guatemala.

11. The note of the Secretariat of the Court of August 24, 2011, in which, following the instructions of the President of the Court and pursuant to Article 27(5) of the Court's Rules of Procedure, the Inter-American Commission was granted a period until August 30, 2011 to submit any observations deemed pertinent in relation to the request for provisional measures and to refer to the comments made by the representatives in their brief of August 22, 2011, regarding a supposed request for precautionary measures presented before the Inter-American Commission in favor of Mr. Luis Roberto Romero Rivera and six other people, and its connection with this request for provisional measures before the Inter-American Court. As of the date of issuing this Order, the Commission had not presented the observations requested.

12. The brief of August 25, 2011, in which the representatives of the alleged victims submitted their observations to the State's report of August 22, 2011 and provided the information required by the President of the Court, in the note of the Secretariat of August 24, 2011 (*supra* Having Seen 10).

CONSIDERING THAT:

1. Guatemala has been a State Party to the American Convention since May 25, 1978 and accepted the contentious jurisdiction of the Court on March 9, 1987.

2. Article 63(2) of the American Convention establishes 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. Under the terms of Article 27 of the Court's Rules of Procedure:

1. 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.

[...]

3. In contentious cases before the Court, victims or alleged victims, or their representatives, may submit to it a request for provisional measures, which must be related to the subject matter of the case.

[...]

5. The Court The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested.

[...]

4. Under international human rights law, provisional measures are not only preventive in the sense that they preserve a juridical situation, but they are also essentially protective because they protect human rights, insofar as they seek to avoid irreparable damage to persons. Thus, provisional measures become a real jurisdictional guarantee of a preventive nature.³

5. Article 63(2) of the Convention requires the concurrence of three conditions for the Court to order provisional measures: a) "extreme gravity"; b) "urgency", and c) the need to "avoid irreparable damage" to persons. These three conditions must coexist and must be present in any situation in which the Court's intervention is requested.⁴

6. Furthermore, the Court has reiterated that, based on the complementary and subsidiary nature of the principles that inform the Inter-American Human Rights System, an order to adopt or maintain provisional measures is justified only in situations

³ Cf. *Case of the Newspaper "La Nacion"*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of September 7, 2001, Considering paragraph 4; *Matter of Wong Ho Wing*. Provisional Measures regarding Peru. Order of the Inter-American Court of March 4, 2011, Considering para. 10, and *Matter of Alvarado Reyes et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of May 15, 2011, Considering para. 5.

⁴ Cf. *Case Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering para. 14; *Matter of Alvarado Reyes et al.*, *supra* note 3, Considering para. 12, and *Matter of Certain Venezuelan Prisons*. Provisional Measures regarding Venezuela. Order of the Court of July 6, 2011, Considering para. 4.

contemplated under Article 63(2) of the American Convention, in which the ordinary guarantees that exist in the State where they are requested are insufficient or ineffective, or the domestic authorities cannot or will not enforce them.⁵

7. The fact that the representatives of the beneficiaries requested the Court to order Guatemala to adopt provisional measures protect the life and physical integrity of Mr. Luis Roberto Romero Rivera, who since 2008 has worked as Director of the Special Investigations Unit of the Office of the Human Rights Ombudsman, which is “in charge of conducting investigations into cases of forced disappearance[s] that occurred during the internal armed conflict in Guatemala” (*supra* Having Seen 2.a). As to his link with the case of *García and Family*, the representatives explained that Mr. Romero Rivera has worked on the domestic criminal investigation into the case of Mr. Edgar Fernando García and referred to the progress and current status of those criminal proceedings, in which military officers have been convicted and a colonel who served as Director of the National Police is being investigated (*supra* Having Seen 2.b). The representatives also referred to the events that allegedly occurred in July 2011, as well as to those that supposedly took place prior to 2011 (*supra* Having Seen 2.c a 2.e). According to the representatives these facts constitute a situation of gravity and urgency, bearing in mind the alleged danger implied in prosecuting military officers in Guatemala.

8. The Court notes that the representatives asked the Court to order provisional measures basically because they knew that the State would withdraw the measures of protection that it had been providing to Mr. Romero Rivera, which consisted of “the provision of personal security by the National Civil Police, which assigns two officers who take turns” (*supra* Having Seen 2.f). These protection measures were initially implemented by Guatemala in the context of the provisional measures ordered by the Court in favor of Mr. Romero Rivera in relation to the case of *Myrna Mack Chang*. On November 16, 2009 this Court decided to lift the provisional measures in favor of the beneficiary Luis Roberto Romero Rivera, taking into account, among other reasons:

26. That with regard to Mr. Luis Roberto Romero Rivera, the representatives stated that at the time he was the attorney in the *Case Mack Chang*, but that due to his present capacity as an official at the office of the Human Rights Ombudsman, he may use other institutional mechanisms of protection. During the private hearing the representatives repeated the foregoing.

[...]

28. That the Court [...] notes that from the information provided by the State and the representatives in their briefs, as well as at the private hearing, the parties agree that in the last seven years there have been no situations that would suggest the existence of a risk for the beneficiary. In addition to this, the beneficiary currently works as legal adviser at the office of the Human Rights Ombudsman, for which reason, as pointed out by the parties, Mr. Romero Rivera would have access to other measures of protection.

29. That [...] since these provisional measures were enforced, there have been no incidents of threats against Mr. Luis Roberto Romero Rivera. Consequently, the Court considers it reasonable to presume that the situation of extreme gravity, urgency and imminent risk which gave rise to the adoption of the provisional measures to protect the life and physical integrity of the beneficiary no longer exists, for which reason his situation no longer falls within the requirements set forth in Article 63(2) of the Convention.

[...]

9. According to the information provided, after the Court lifted those measures in the case of *Myrna Mack Chang*, Guatemala continued to provide security to Mr. Romero Rivera. The Court interprets this action by the State as part of its fulfillment of the

⁵ Cf. *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the President of the Inter-American Court of August 22, 2007, Considering para. 14; *Matter of El Rodeo I and El Rodeo II Judicial Confinement Center*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of February 8, 2008, Considering para. 15, and *Matter of the Mendoza Prisons*. Provisional Measures regarding Argentina. Order of the Court of July 1, 2011, Considering para. 40.

obligation to guarantee Mr. Romero Rivera's right to life and personal integrity, in light of the provisions of Article 1(1) of the American Convention (*infra* Considering para. 17).

10. In submitting its observations to the request for provisional measures (*supra* Having Seen 6) the State asked the Court to declare that request inadmissible, given that the recent facts to which the representatives referred "did not suggest the gravity and urgency of the situation and [had] not been denounced before the competent organs." The State did not submit any observations regarding the connection between the request for provisional measures and the object of the case of *García and Family*, and instead affirmed that one of the factors of risk for Mr. Romero Rivera is the investigation of that case (*infra* Considering para. 12).

11. Of particular relevance to the analysis of this request for provisional measures is the fact that upon submitting its observations (*supra* Having Seen 6) Guatemala stated that it would "provide national protection to Mr. Luis Roberto Romero Rivera, with his prior consent and after the respective risk assessment, with mechanisms to guarantee the life, physical integrity and security of the petitioner." In this regard the State declared that

[...] in compliance with Article 1(1) of the American Convention on Human Rights and with the principles *pro persona*, good faith, *pacta sunt servanda*, *favor libertatis*, *adoption of domestic measures –allant de soi-* that inform International Human Rights Law, the State of Guatemala, considering the position held by the attorney Luis Roberto Romero Rivera and having regard to the cases which he investigates and conducts, shall adopt, with his prior consent and after a risk assessment, a protection and security system that is appropriate to the threat, risk or vulnerability that must be counteracted, in accordance with its national mechanisms. (*emphasis of the original*)

12. Subsequently, in a brief of August 22, 2011 (*supra* Having Seen 8), Guatemala provided additional information regarding the proposed protection. The State reported that a study was carried out which "considered the factors of risk affecting Mr. Romero Rivera, including, his investigation of cases of historical and national importance, such as the case in question." Furthermore, Guatemala indicated that the agents who provided security for Mr. Romero Rivera were not withdrawn at any time and "therefore the protection scheme of which Mr. Romero Rivera is the beneficiary has been provided in an uninterrupted and continuous manner." The Court emphasizes that the State pointed out that, based on the risk assessment carried out and the evidence provided by the beneficiary, "the level of risk to the life and physical integrity of Mr. Romero Rivera demonstrated and confirmed the advisability of continuing with the current scheme (personal security provided by two agents [...], working in shifts of 8 days with 8 days of rest)". Finally, Guatemala indicated that Mr. Romero Rivera had requested accompaniment by a police vehicle when he needs to move from one place to another, for which "it is necessary to carry out the relevant procedures and ascertain the feasibility of that petition", and that it would report on this matter in due course.

13. In this regard, following the instructions of the President of the Court, the representatives were asked to indicate whether Mr. Romero Rivera had agreed to the protection proposed by the State (*supra* Having Seen 7 and 10). In the brief of August 25, 2011 (*supra* Having Seen 12), the representatives stated that "[a]fter being consulted on this matter, Mr. Luis Roberto Romero Rivera, accept[ed] the security measures proposed" by Guatemala. They further indicated that after "after the State had verified the situation of risk facing Mr. Luis Roberto Romero Rivera, and after he had accepted the security plan, they respectfully reiterate [te] that he be granted security as has been receiving, and that he also be assigned the accompaniment of a police vehicle when he needs to move from one place to another." Finally, they requested that "the honorable Court, accompany the monitoring of the fulfillment of the security measure proposed by the State of Guatemala."

14. As of the date of issuing this Order, the Inter-American Commission had not submitted any observations to the request for provisional measures and had not responded to the President's request for information (*supra* Having Seen 11).

15. The Court takes cognizance of Guatemala's offer to continue providing measures of protection in favor of Mr. Romero Rivera and notes that the latter "accept[ed] the security measure proposed" under the terms established in the preceding paragraphs. Also, it is important to emphasize that the State has acknowledged that Mr. Romero Rivera faces a risk associated with his public position as Director of the Special Investigations Unit of the Office of the Human Rights Ombudsman and the cases which he investigates, including the case of Mr. Edgar Fernando García.

16. The Court considers that the State has offered and is implementing measures to protect the life and integrity of Mr. Romero Rivera which, at this time, make unnecessary the Court's subsidiary and complementary intervention through the issuance of provisional measures. During the processing of this request, Guatemala has maintained an attitude that leads this Court to assume that it will continue adopting the measures necessary to guarantee the right to life and integrity of Mr. Romero Rivera. Therefore, the Court considers that it is not appropriate to analyze whether the conventional requirements of gravity, urgency and irreparable damage are satisfied (*supra* Considering para. 5) since it is not necessary to order provisional measures of protection.

17. The Court reiterates that 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 the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction. The Court emphasizes that, as the State itself has acknowledged (*supra* Considering paras. 9 and 11), regardless of the existence of provisional measures ordered by this Court, the State is obliged to guarantee the rights of Mr. Romero Rivera⁶.

18. Finally, with regard to the representatives' request that the State assign to Mr. Romero Rivera "the accompaniment of a police vehicle for any movements he may need to make", it is the State's obligation, in accordance with the aforementioned duty to guarantee human rights, not only to maintain the measures of protection it has adopted for the time warranted by the circumstances, but also to implement those necessary to effectively protect Mr. Romero Rivera, taking into account his situation of risk. Therefore, it is necessary that the State maintain adequate communication, coordination and cooperation with the beneficiary of the measures.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority granted by Article 63(2) of the American Convention on Human Rights and Articles 27 and 31 of the Court's Rules of Procedure,

DECIDES:

⁶ Cf. *Matter of María Lourdes Afiuni*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of March 2, 2011, Considering para. 12.

1. Not to order the State to adopt provisional measures in favor of Mr. Luis Roberto Romero Rivera, having regard to the principles of complementarity and subsidiarity inherent to the Inter-American Human Rights System, as indicated in Considering paragraphs 6 and 16 of this Order.

2. To archive the file concerning the request for provisional measures submitted on July 26, 2011 by the representatives in the case of *García and Family*.

3. To require the Secretariat of the Court to notify this Order to the representatives in the case of *García and Family*, the Republic of Guatemala and the Inter-American Commission of Human Rights.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary