

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 20, 2003***

PROVISIONAL MEASURES

LUIS UZCÁTEGUI V. VENEZUELA

HAVING SEEN:

1. The November 27, 2002 Order of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") regarding the Provisional Measures requested by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") in favor of Luis Enrique Uzcátegui Jiménez, in which it decided:

1. To order the State to adopt, without delay, all necessary measures to protect the life and the right to humane treatment of Luis Enrique Uzcátegui Jiménez.
2. To order the State to allow the applicants to participate in planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.
3. To order the State to investigate the facts stated in the complaint that gave rise to the instant measures, with the aim of discovering and punishing those responsible.

[...]

2. The December 12, 2002 brief filed by the Venezuelan State (hereinafter "the State" or "Venezuela") in which it submitted its first report on "compliance with the November 27 [2002] Order of [the] Court" in favor of Luis Uzcátegui Jiménez and it reported that it had sent briefs to the Ministry of the Interior and Justice, the Public Prosecutor's Office and the Office of the Ombudsperson, asking them to "issue the appropriate orders for compliance with the Provisional Measures" and the "Office of the Attorney General [Fiscal General de la República] [...] reported that the 1st Prosecutor of the Public Prosecutor's Office of Court Circuit of the State of Falcón was commissioned" to carry out the measure set forth in operative paragraph 3 of the Order of the Court in the instant case (*supra* Having Seen 1).

3. The December 20, 2002 observations of the Inter-American Commission to the first report by the State on the Provisional Measures, in which it stated that it "deems it fundamental to carry out all necessary measures for full protection" of the beneficiary, as no official act had been carried out by the State to fully comply with the Provisional Measures and "the situation of Luis Enrique Uzcátegui Jiménez, far from improving, ha[d] worsened, [for which reason] the State [was] seriously in contempt [...]."

4. The December 20, 2002 note by the Secretariat of the Court (hereinafter "the Secretariat") in which, under instructions by the President of the Inter-American

* Judges Máximo Pacheco Gómez and Carlos Vicente de Roux Rengifo informed the Court that, for reasons of *force majeure*, they could not attend the public hearing on February 17, 2003, for which reason they did not participate in the deliberation and signing of the instant Order.

Court of Human Rights (hereinafter "the President"), it asked the Venezuelan State to submit a report on implementation of Provisional Measures no later than January 10, 2003.

5. The January 10, 2003 report by Venezuela, in which the State referred to implementation of the Provisional Measures in favor of Luis Uzcátegui Jiménez and stated that on December 11, 2002 "the Office of the Attorney General [Fiscal General de la República] [...] reported that the 1st Prosecutor of the Public Prosecutor's Office of Court Circuit of the State of Falcón was commissioned [...] with the aim of complying with the measure set forth in operative paragraph 3 of the Order of [the] Court."

6. The January 21, 2003 brief by the Inter-American Commission, in which it stated "its deep concern, due to the fact that the second report by the Venezuelan State, on January 10, 2003, merely reiterates what was stated in its first report and does not provide any information to demonstrate effective compliance by the State with the provisional measures granted by the Court."

7. The request by the Commission, in its January 21, 2003 brief (*supra* Having Seen 6), asking the Court to "urgently summon the parties to a public hearing at its seat during its forthcoming session, with the aim of evaluating compliance by the State with the provisional measures."

8. The January 24, 2003 Order of the President, in which, after consulting with all the Judges of the Court, he decided:

1. To summon the State and the Inter-American Commission on Human Rights to a public hearing to be held at the seat of the Inter-American Court of Human Rights on February 25, 2003, from 9:00 hours to 13:00 hours, for the Court to hear their viewpoints regarding the facts and circumstances pertaining to implementation of the Provisional Measures in the cases of Liliana Ortega *et al.*, Luis Uzcátegui and Luisiana Ríos *et al.*

[...]

9. The January 23, 2003 brief filed by the Inter-American Commission, received by the Secretariat on January 27, in which it requested the Court, *inter alia*, to hear the testimony of Luis Uzcátegui regarding the Provisional Measures granted in his favor, "in the event [that the] Court decides to convene a public hearing at its forthcoming session."

10. The January 27, 2003 note of the Secretariat in which, *inter alia*, it asked the Commission to present the object of the testimony offered with respect to Luis Uzcátegui, so as to submit said information to the President of the Court, and the January 30, 2003 brief filed by the Commission, in which it presented the object of the testimony requested.

11. The January 30, 2003 brief filed by the Inter-American Commission, in which it stated that "Luis Enrique Uzcátegui Jiménez's home was raided on January 23, 2003 without a court order by the Armed Police Forces (FAP) of the State of Falcón and he was illegally detained at the General Headquarters of the FAP in the city of Santa Ana de Coro, where he was kept until the morning of January 27 of this year."

12. The January 31, 2003 brief by the Secretariat of the Court, in which, under instructions by its President, it forwarded to the State the witness proposal made by

the Commission (*supra* Having Seen 9) for it to submit its observations on the proposal, and the February 5, 2003 brief by the Venezuelan State, in which it stated that "the Venezuelan State has no objection, when the public hearing is held, to the [witness proposed by the Commission] being heard."

13. The February 6, 2003 Order of the President of the Court, in which he decided:

1. To summon the representatives of the Inter-American Commission on Human Rights and of the State of Venezuela to a public hearing at the seat of the Inter-American Court, commencing at 10:30 hours on February 17, 2003, to hear testimony by the witnesses summoned and for the Court to hear their viewpoints regarding the facts and circumstances pertaining to implementation of the Provisional Measures in the cases of Liliana Ortega *et al.*, Luis Uzcátegui and Luisiana Ríos *et al.*

[...]

3. To summon Luis Uzcátegui to appear before the Inter-American Court of Human Rights, commencing at 10:30 hours on February 17, 2003 to render testimony on "non-compliance by the State regarding the measures ordered by the Court [and on] lack of investigation, lack of police protection, and constant threats and harassment by State agents [suffered] since the provisional measures were issued."

[...]

6. To request the State of Venezuela to facilitate [Luis Uzcátegui's] exit from and entry to its territory [having been summoned] by the Inter-American Court of Human Rights to render testimony with respect to the instant Provisional Measures.

14. The February 14, 2003 brief by the Inter-American Commission on Human Rights in which it stated that Mr. Uzcátegui Jiménez will not attend "the [...] public hearing to be held at the seat of the Court in Costa Rica on February 17, 2003 [...] as he does not have the required documentation" and asked the court to "accept his sworn statement as his testimony."

15. The February 15, 2003 notes by the Secretariat of the Court in which it informed the Commission and the State that "in view of the haste with which said brief was received at this Secretariat, it will be made known to the Inter-American Court" at the prior meeting before the public hearing summoned for February 17, 2003, where the parties will be able to make whatever observations they deem pertinent.

16. The public hearing on the instant Provisional Measures held at the seat of the Inter-American Court on February 17, 2003, where there appeared before the Court:

On behalf of the Inter-American Commission on Human Rights:

Eduardo Bertoni, delegate;
Juan Carlos Gutiérrez, assistant;
Carlos Ayala, assistant, and
Liliana Ortega, assistant.

On behalf of the State of Venezuela:

Jorge Dugarte Contreras, agent, and
Gisela Aranda, assistant.

17. The oral arguments of the Commission, made at the aforementioned public hearing, summarized as follows:

a) "Luis Uzcátegui, who lives in [...] the State of Falcón, is the brother of Néstor José Uzcátegui, murdered on January 1, 2001 by alleged parapolice groups. Since his brother's murder, Luis Uzcátegui systematically sought justice, struggled against impunity and in the process called a meeting of various next of kin of the victims [...] in the State of Falcón. Due to this he began to be persecuted, harassed [...] has been detained several times, has been beaten several times [...], his homes have been raided on multiple occasions, and more recently [...] he was even accused by the Commander of the Armed Police Forces of the State of Falcón, for revilement and defamation [...]."

b) "After the provisional measures, these acts of harassment and intimidation have intensified, [and] [...] after the order of the [...] Court, Luis Uzcátegui Jiménez has not been contacted [...] by the authorities of the Venezuelan State, with the aim of complying with that order [...]."

"The Venezuelan State is in open contempt of the provisional measures in favor of Mr. Uzcátegui, [...] [and furthermore] when the interested person himself went to post number 42 of the National Guard of the Security Corps, [...] the Commander of that post humiliated him and arrested him all day in the courtyard of the military facilities [...]."

c) The Venezuelan Government, in the information it has sent to the Court, reported that it "has commissioned for the protection of Mr. Uzcátegui the police corps that he has denounced as those persecuting him and as the authors of the acts of harassment and intimidation. [...] which "is [...] unacceptable and unjustifiable."

d) "[T]he Venezuelan State is justifying its non-compliance with the measures on the basis of the police reports they have filed on Luis Uzcátegui, who in turn is the brother of a victim of the parapolice groups in the State of Falcón, and who has filed a number of claims against the police. Luis Uzcátegui's life is definitely in danger" and he is suffering a violation of the presumption of innocence and of due process.

e) Due to "the repetitive acts of intimidation and attacks against him and in view of the obvious will to be in contempt of the provisional orders issued in his favor [...]. Mr. Uzcátegui has been forced to live a wandering life, seeking refuge with his next of kin outside the State of Falcon and seeking on his own a safe place to go to."

f) The Commission submits the proposal that first of all "due to absolute non-compliance by the Venezuelan State and the risk to the life and personal safety of Luis Uzcátegui [...] [,] until his protection is guaranteed in the State of Falcón, where he has his permanent residence, the Venezuelan State immediately grant him means of subsistence in the State of Carabobo in the city of Valencia;" secondly, that "through his transfer via an administrative definition in Venezuelan legislation, which is the seconding of services of public officials," he be given "a job with similar characteristics to [his] job, as assistant to the Legislative Commission in said State;" third, "the Venezuelan State must organize and provide and guarantee provision of psychological care as required by Luis Uzcátegui", and fourth, "to carry out [...] the investigation and punishment of those responsible, by complying with the

duty to investigate by means of the appointment, by the Public Prosecutor's Office, of a new national prosecutor, in consultation with the applicants."

18. The oral arguments made by the State at that same public hearing, summarized as follows:

a) The Commander of the Armed Police Forces of the State of Falcón forwarded a file in which there are "[a]bundant details on the [...] irregular behavior" of Luis Uzcátegui "all this has made it difficult for the Venezuelan State to provide protection by police agents to a person who has often had to be detained at police posts for [aggression]."

b) "[T]he case in point is one that is incumbent upon Venezuelan courts." "There is a problem in the State of Falcón that is incumbent upon the Courts in the State of Falcón , and that must fall under that jurisdiction to clarify a number of facts and circumstances that cannot, for example, lead the police authorities of the State of Falcón to obey, as if they were automatons, provisional measures in favor of a person who [...] has been taken into custody by the police several times [...]."

c) The officials in charge of carrying out the measure granted by the Court were faced by a request to protect "not, precisely, [a] person whom they did not know, but rather a person whom they unfortunately knew from the facts [described]."

d) "[I]n one way or another the Armed Police Forces of the State of Falcón [...] will take care, even if indirectly, to avoid a bothersome situation for the State, to ensure that nothing happens to [Luis Uzcátegui]."

e) It is not easy to understand the situation of having to "provide protection to a person whom they have had to imprison several times for aggression against his own family." Neither the law, "nor the interpretation of laws and institutions, can under any circumstances [...] lead to the absurd, they must lead us to logical, reasonable, and rational solutions, within the context of proceeding fairly and equitably."

19. The documents filed by the Inter-American Commission at the public hearing, which were two copies of the February 17, 2003 letter signed by Juan Carlos Gutiérrez, Regional Director of CEJIL, and addressed to the Secretariat of the Court, and the original and one copy of the statement rendered by Luis Enrique Uzcátegui Jiménez on February 13, 2003.

20. The sworn statement by Luis Uzcátegui (*supra* Having Seen 19), in which he stated that:

a) On February 13, 2003 he rendered testimony before the Municipal Court of Carrizal in the State of Miranda, regarding the death of his brother Néstor José Uzcátegui, in connection with the acts of harassment that he and his family had suffered in pursuit of justice, as well as regarding the Provisional Measures ordered by the Inter-American Court on November 27, 2002.

b) On January 1, 2001 a commission of the "LINCE" Group and "DIPE" (Police Directorate of the State) of the Armed Police Forces of the State of

Falcón raided his home without a court order. Then, he was handcuffed together with his younger brother Carlos Uzcátegui, whom they hit on the head, and they shot his brother Néstor José Uzcátegui in the groin, in the left leg and in the heart. The police officials, whom he was able to identify as members of the "LINCE Group" due to the uniforms and vehicles they used, sought to cover up the murder by feigning a confrontation.

c) Harassment against him began the same day that his brother was murdered, when some of the police officials kidnapped him, taking him to "a place in the open country" and threatening to kill him if he denounced the facts. Harassment continued through threatening visits or phone calls by DIPE officials at his home and place of work. On December 26, 2002, DISIP (Dirección de los Servicios de Inteligencia y Prevención) officials, identified as such, raided his sister's home.

d) Given the loss of his brother and constant threats and persecution by DIPE officials, Luis Uzcátegui organized a committee of next of kin of victims of parapolice groups. On January 3, 2001 he denounced the facts before the Office of the Ombudsperson and on January 4 of that same year he did so before the Public Prosecutor's Office of the State of Falcón and before the Judiciary Police. He ratified these claims in Caracas on July 8, 2002, but there was no reply.

e) Due to lack of protection for himself and his family, requested of the National Guard of Venezuela by the witness and by the Inter-American Court of Human Rights by means of Provisional Measures, he has changed his place of residence several times, had to leave the State of Falcón, lost his job and distanced himself from his family to protect them. This also caused him insomnia, loss of appetite, gastritis, for which reason he requested before the courts that threats against him cease, that he and his family receive protection from a corps other than the Armed Police Forces of the State of Falcón, the National Guard, or the DISIP of the State of Falcón; that the facts be investigated, and that those responsible be found and punished so that he can recover a normal life.

21. The documents filed by the State during the public hearing held on February 17, 2003, which were a "document with clarification of claims by citizen Luis Uzcátegui Jiménez" and general information on cases of armed confrontations between policemen, criminals and others, sent by General Commissioner Oswaldo Rodríguez León to the Ministry of Foreign Affairs, Office of the Agent of the State for Human Rights before the inter-American and international system.

CONSIDERING:

1. The State ratified the American Convention on August 9, 1977 and, pursuant to article 62 of that Convention, it recognized the contentious jurisdiction of the Court on June 24, 1981.

2. Article 63(2) of the American Convention sets forth that, in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may adopt such provisional measures as it deems pertinent in matters it has under consideration, and in cases not yet submitted to the Court, it may act at the request of the Commission.

3. Pursuant to Articles 25(1) and 25(2) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"):

[a]t 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.

[w]ith respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. Article 1(1) of the Convention sets forth the duty of the States Party 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. The object of provisional measures, in national legal systems (domestic procedural law) in general, is to protect the rights of the parties to the dispute, ensuring that the judgment on the merits is not negatively affected by their actions *pendente lite*.

6. The object of urgent and provisional measures, under International Human Rights Law, goes further, as in addition to their essentially preventive nature, they effectively protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.

7. The Court already established in its November 27, 2002 Order, that the background filed by the Commission in its request demonstrated *prima facie* the existence of a situation of extreme gravity and urgency regarding the life and physical safety of Luis Enrique Uzcátegui Jiménez.¹

8. The Inter-American Commission informed the Court on February 14, 2003 that Luis Uzcátegui would not be able to appear at the hearing summoned by the President of the Court on January 24, 2003 (*supra* Having Seen 8) and to which he was summoned on February 6 of that same year (*supra* Having Seen 13), in view of the lack of "the documentation required" (passport) and they therefore requested that his sworn statement be accepted (*supra* Having Seen 14).

9. As was stated by the President of the Inter-American Court in his February 6, 2003 Order:²

[...] regarding any summons, when they refer to persons who are in the territory of the State, the latter must provide its cooperation to summon them. In this regard, Article 24 of the Rules of Procedure sets forth that:

1. The States Parties to a case have the obligation to cooperate so as to ensure that all notices, communications or summonses addressed to persons subject to their jurisdiction are duly executed. They shall also facilitate

¹ Cf. *Luis Uzcátegui vs. Venezuela Case. Provisional Measures*. November 27, 2002 Order of the Inter-American Court of Human Rights, Considering five.

² Cf. *Luis Uzcátegui vs. Venezuela Case. Provisional Measures*. February 6, 2003 Order of the President of the Inter-American Court of Human Rights, Considering five.

compliance with summonses by persons who either reside or are present within their territory.

[...]

10. Article 43(3) of the Rules of Procedure of the Court establishes that:

[s]hould any of the parties allege *force majeure*, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.

and the Venezuelan State did not object to receiving Mr. Uzcátegui's sworn statement instead of his oral testimony.

11. In view of the facts submitted at the public hearing (*supra* Having Seen 17 and 18) and of the content of the sworn testimony of Mr. Uzcátegui (*supra* Having Seen 20), the Court deems it necessary to reiterate to Venezuela that it is the responsibility of the State to adopt security measures to protect all persons under its jurisdiction and that this duty is all the more evident with respect to those involved in proceedings before the protection bodies of the American Convention.

12. Venezuela has the duty to investigate the facts that gave rise to the Provisional Measures in favor of Luis Uzcátegui, as the State has the obligation to combat said situation by all legal means available because impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and of their next of kin.³

13. The Court, as does any international body with jurisdictional functions, has the power, inherent to its authority, of establishing the scope of its orders and decisions, and compliance with them cannot be left to mere discretion of the parties as it would be inadmissible to subordinate a mechanism set forth in the American Convention to restrictions that would make the function of the Court, and therefore the system for protection of human rights enshrined in the Convention, ineffective.⁴

14. The States must comply in good faith with their obligations under the Convention (*pacta sunt servanda*) as set forth in Article 27 of the 1969 Vienna Convention on Treaty Law, which defines a basic principle of general international law by stating that:

a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. ...

³ Cf. *Bámaca Velásquez Case. Reparations (Art. 63(1) American Convention on Human Rights)*. February 22, 2002 Judgment. Series C No. 91, para. 64; *Bámaca Velásquez Case*. November 25, 2000 Judgment. Series C No. 70, para. 211 and *Loayza Tamayo Case. Reparations (Art. 63(1) American Convention on Human Rights)*. November 27, 1998 Judgment. Series C No. 42, para. 170.

⁴ Cf. *Hilaire, Constantine and Benjamin et al. case*. June 21, 2002 Judgment. Series C No. 94, para. 19; *Hilaire Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 80, paras. 82 and 84; I-A Court of HR, *Benjamin et al. Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 81, paras. 73 and 75; I-A Court of HR, *Constantine et al. Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 82, paras. 73 and 75; *Case of the Constitutional Court. Jurisdiction*. September 24, 1999 Judgment. Series C No. 55, para. 35, and *Ivcher Bronstein Case. Jurisdiction*. September 24, 1999 Judgment. Series C No. 54, para. 36.

NOW THEREFORE:**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

by virtue of the authority granted to it by Articles 63(2) of the American Convention on Human Rights and 25 of its Rules of Procedure.

DECIDES:

1. To declare that the State has not effectively implemented the Provisional Measures ordered by the Inter-American Court in its Order of November 27, 2002.
2. To reiterate the order for the State to adopt, without delay, all necessary measures to protect the life and the right to humane treatment of Luis Enrique Uzcátegui Jiménez.
3. To reiterate the order for the State to allow the applicants to participate in planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.
4. To reiterate the order for the State to investigate the facts stated in the complaint that gave rise to the instant measures, with the aim of discovering and punishing those responsible.
5. To order the State to report to the Inter-American Court of Human Rights on the measures adopted to comply with the instant Order, no later than February 28, 2003.
6. To order the Inter-American Commission on Human Rights to submit its comments on the report by the State to the Inter-American Court of Human Rights, within a week of being notified thereof.
7. To order the State, subsequent to its February 28, 2003 report (*supra* operative paragraph five), to continue reporting to the Inter-American Court of Human Rights, every two months, on the Provisional Measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to said reports within six weeks of receiving them.
8. To serve notice of the instant Order to the State and to the Inter-American Commission on Human Rights.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Oliver Jackman

Hernán Salgado-Pesantes

Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary