

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF SEPTEMBER 26, 2006**

**REQUEST FOR PROVISIONAL MEASURES SUBMITTED BY THE INTER-
AMERICAN COMMISSION ON HUMAN RIGHTS
REGARDING EL SALVADOR**

MATTER OF GLORIA GIRALT DE GARCIA-PRIETO *ET AL.*

HAVING SEEN:

1. The writing of September 25, 2006 and its Appendixes, by means of which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), and Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), with the purpose that the State of El Salvador (hereinafter "the State" or "El Salvador") adopt the measures necessary to protect the life and personal integrity of the following persons: "Gloria Giralt de García-Prieto, José Mauricio García-Prieto [Hirlemann], María de los Ángeles García-Prieto de Charur, [José] Benjamín Cuéllar-[Martínez], Matilde Guadalupe Hernández de Espinoza, Paulino Espinoza, and José Roberto Burgos-Viale."

2. The beneficiaries of this request for provisional measures are Gloria Giralt de García-Prieto, José Mauricio García-Prieto-Hirlemann and María de los Ángeles García-Prieto de Charur, next of kin of Ramón Mauricio García-Prieto-Giralt, who was murdered on June 10, 1994 in El Salvador. Other beneficiaries are José Benjamín Cuéllar-Martínez, Matilde Guadalupe Hernández de Espinoza, and José Roberto Burgos-Viale, legal counselors of the García-Prieto-Giralt family, and members of the *Instituto de Derechos Humanos de la Universidad Centroamericana* (Institute of Human Rights of the Central American University) (hereinafter, "IDHUCA", for its acronym in Spanish). Paulino Espinoza is the husband of Matilde Guadalupe Hernández.

3. The grounds pointed out by the Commission in its request for provisional measures (*supra* Having Seen clause No. 1), the summary of which is as follows:

3.1 *Regarding the provisional measures ordered by the Commission*

a) On October 22, 1996, the petitioners applied for the issuance of provisional measures in favor of the next of kin of Ramón Mauricio García-Prieto-Giralt and their counselors, since during the course of the proceedings

* Judge Oliver Jackman was not present at the deliberations and did not sign this Order since he had informed the Court that, for reasons beyond his control, he would be unable to participate at the LXXII Ordinary Session of the Court.

before the Commission, they were victims of several threats and attacks. On June 20, 1997, the Commission requested the State to adopt provisional measures in favor of "[José] Mauricio García-Prieto-Hirlemann, Gloria Giralt de García-Prieto, and Carmen [Estrada] de García-Prieto, as well as in favor of the lawyers and witnesses related to the investigation and trial of the persons liable for the death of Ramón Mauricio García-Prieto-Giralt." The measures ordered included the investigation into the origin of the threats and the punishment of the persons liable therefor;

b) On November 20, 2001, the Commission addressed the State and reiterated the need to issue provisional measures "in order to protect the life and the physical integrity of [José] Mauricio García-Prieto-Hirlemann, Gloria Giralt de García-Prieto and their legal counselors from IDHUCA." The Commission stated that, despite the issuance of said provisional measures, the beneficiaries had continued receiving threats and attacks that endangered their lives and personal integrity. Although the State has given protection to said persons, said protection is very limited and it has been granted without conducting an effective investigation that would have allowed for the identification of the perpetrators of said acts;

c) on March 5, 2004, during the 119th Session, the Commission held a meeting to analyze the merits of the case, as well as any issues related to the provisional measures. During said meeting, the petitioners stated that the provisional measures ordered had not been complied with. On the other hand, the State expressed that it had protected the physical and psychological integrity of the García-Prieto-Giralt family and that of the lawyers participating in the case. As regards the lawyers, the State pointed out that they had been assigned a security service, which had been implemented pursuant to the conditions requested by the beneficiaries, in compliance with the provisional measures;

d) on March 18, 2004, the State requested that the provisional measures be lifted since on October 7, 1999 Carmen Estrada de García-Prieto, widow of Ramón Mauricio García-Prieto-Giralt, due to personal reasons, decided to reject the protection services she had been assigned, and stated that she assumed the risks involved in her decision;

e) on April 7, 2004, the petitioners informed that their lives and personal integrity were still at risk, and they also stated their disagreement with the way the National Civil Police was giving protection to the García-Prieto-Giralt family and two counselors from IDHUCA. Thus, they stated their willingness to "waive the provisional measures as regards to the protection granted by the National Civil Police, unless the decision-taking mechanisms on said protection service and its implementation were materially changed;

f) however, the Commission stated that the provisional measures remained in force and operative due to the permanent threats received by the next of kin of Ramón Mauricio García-Prieto-Giralt and their lawyers, and José Benjamín Cuéllar-Martínez and María de los Ángeles García-Prieto-Giralt de Charur had special police protection;

g) on February 9, 2006, the Commission received from the beneficiaries updated information on the implementation of the provisional measures in connection with the protection granted to José Benjamín Cuéllar-Martínez and María de los Ángeles García-Prieto de Charur and on new intimidating events occurred as of January 2005, and therefore, they requested the Commission to urge the State "to adopt the measures necessary to guarantee the life and personal integrity of the beneficiaries of the provisional measures, which should be duly agreed with the beneficiaries and their representatives." On

February 24, 2006, the State pointed out that the new request “seemed peculiar and strange,” but it had requested a detailed report on the situation of the García-Prieto-Giralt family. The State expressed that the services of personal protection were rendered by the National Civil Police, pursuant to the Political Constitution and its local regulations, and therefore the State pointed out that it would be difficult “for the State to grant protection and security by means of private agents or persons who are not specifically trained to provide such protection.” The State further referred to the need to make a risk level assessment and to analyze the different actions to be implemented in the instant case, pursuant to the Instructions of the *División de Protección de Personas Importantes* (Division for the Protection of Very Important People) in connection with the allocation of Security Services, issued in 2002.”

h) on May 25, 2006, the beneficiaries referred to the “negligent and careless conduct of governmental bodies and informed on the permanent anonymous calls and threats” received. Said information was provided to the State, and on July 5, 2006, the latter stated that the provisional measures “are limited by our legislation.” Besides, the State expressed that from year 1997 to year 2004, the State “granted and maintained provisional measures in favor of [the beneficiaries,] and to such end significant economic and human resources were invested.” Furthermore, it stated that afterwards, some next of kin and legal counselors waived the measures owing to the way the protection was provided, “and those related to Mr. [José] Benjamín Cuéllar-[Martínez] and Mrs. María de los Ángeles García-Prieto [de Charur] were still effective at that time,” and

i) on July 26, 2006, the Commission requested the beneficiaries to explain in detail the kind of protection the State was giving to José Benjamín Cuéllar-Martínez and to María de los Ángeles García-Prieto; to point out if there were other persons, beside those referred above, who need protection, and if such was the case, to specify what kind of protection they were requesting and why, and to describe in chronological order, the threats received since February 2006. On August 15, 2006, the beneficiaries stated that:

i) José Benjamín Cuéllar-Martínez has been assigned a police escort, who is a member of the *División de Víctimas y Testigos de la Policía Nacional Civil* (National Civil Police Division of Victims and Witnesses) who escorts him from Monday through Friday, from 8.00 a.m. to 5.00 p.m.. However, on August 14, 2006, he was informed that the *División de Víctimas y Testigos de la Policía Nacional Civil* (National Civil Police Division of Victims and Witnesses) had decided to replace the agent assigned with “other agent similarly trained.” Mr. Cuéllar-Martínez expressed his opposition to such substitution;

ii) María de los Ángeles García-Prieto de Charur has been assigned two police escorts belonging to the same Division -, with revolving shifts of one week each. In both cases, the National Civil Police has provided each security agent with a short gun and cartridges but they have not been given cell phones, communication radios or other tools that could allow them to perform their tasks more efficiently, and

iii) owing to the ongoing threats and intimidating acts suffered by the spouses García-Prieto-Giralt, the director of the IDHUCA and other members of said institution, it is indispensable to grant José Mauricio García-Prieto and Gloria Giralt de García-Prieto an efficient personal protection to guarantee their life and personal integrity.

3.2 Regarding the facts upon which the provisional measures are grounded.

- a) The alleged facts which are the grounds for the provisional measures requested, occurred after June 6, 1995, when the next of kin of Ramón Mauricio García-Prieto-Giralt and their legal representatives, members of the IDHUCA, would have been the victims of several threats and attacks;
- b) As regards the next of kin of Ramón Mauricio García-Prieto-Giralt, the Commission alleged that they had been the victims of several events and that they had received many anonymous and threatening telephone calls and text messages, to wit:

- i) On August 4, 1998, José Mauricio García-Prieto-Hirlemann and Gloria Giralt de García-Prieto, parents of Ramón Mauricio García-Prieto-Giralt, were attacked by strangers, who shot at them with guns. The attack was repelled by members of the *División de Protección de Personalidades Importantes de la Policía Nacional Civil* (National Civil Police Division for the Protection of Very Important People);
- ii) On November 26, 1998, several strange anonymous calls were received at the García-Prieto-Giralt family home, which were reported some days later by an officer in charge of protecting Ms. Gloria Giralt de García-Prieto;
- iii) On December 10, 1999, José Mauricio García-Prieto-Hirlemann and Gloria Giralt de García-Prieto, while being in a house that belongs to one of their daughters, were told that "two men in black, with their faces painted and obviously armed, arrived at the house of a neighbor and asked for Mr. García-Prieto-[Hirlemann], stating that they were eagerly looking for him to kill him." The spouses García-Prieto-Giralt, accompanied by two officers of the *División de Protección de Personalidades Importantes de la Policía Nacional Civil* (National Civil Police Division for the Protection of Very Important People): Carlos Eleazar García-Hernández and Luis Alonso-Ramos, went to the National Civil Police station of "Las Placitas" where officer Medina, institutional license number 100094, received them and stated "that they should not worry since the *Patrulla de Reconocimiento de Largo Alcance* (RECONDO) (Large Scope Investigation Police Patrol) was operating in the area; that the officers of said patrol were dressed alike the persons described by the spouses so, it was probable that a military officer friend of Mauricio had sent someone to say that;"
- iv) On May 2, 2001, the spouses García-Prieto-Giralt reported to Licentiate René Domínguez -at that time the General Deputy Director of the National Civil Police-, that they had received telephone calls the numbers of which were recorded in the caller identification device and which had been made from the National Civil Police station in San Lorenzo, Department of San Vicente, from a garage mechanic in said town and from the emergency service of said National Civil Police. Through said calls they received "insults and whistles by strangers;"
- v) On November 14, 2001, the *Procuraduría para la Defensa de los Derechos Humanos* (Office of the Prosecutor for the Defense of Human Rights) stated that, a day before a hearing with the Inter-American Commission, the García-Prieto-Giralt family had reported that some telephone calls had been received at the dwelling house of the spouses

García-Prieto-Giralt, whereby the household personnel had been insulted and told they "wish to die;"

vi) On April 7, 2004, the representatives informed the Commission that after the hearing held with the State on March 2004, one of the estates called "El Carmen", owned by the García-Prieto-Giralt, was set on fire intentionally by unknown persons;

vii) On January 26, 2005, two subjects entered and, aiming at José Mauricio García-Prieto, took the arm the latter held at his waist. Then, they fled in a taxi that was waiting for them. The corresponding complaint was filed on that same day. The threats and harassment against Mauricio García-Prieto and Gloria Giralt de García-Prieto stopped during the rest of that year 2005 as they spent the greatest part of the year, as of such event, abroad;

viii) Approximately since mid-April 2006, some strangers have been making telephone calls to the home of the García-Prieto-Giralt family, in the early morning. When answering the call, the strangers only remain silent and then they hang up. Sometimes, these calls are received two or three times during the same night. The originating telephone numbers of these calls are not recorded by the caller identification device installed in the house of the García-Prieto-Giralt family. This situation has been occurring from that date up to the present time;

ix) Approximately on April 15, 2006, at 7.30 p.m., Gloria Giralt de García-Prieto was coming back home from the supermarket accompanied by Sonia Gómez, when she noticed that a car was following them; so, she called her home from her cell phone and asked that the garage door be opened so that she could enter rapidly. When entering the garage of her house, the other vehicle slowed down and stopped in front of her house. Then, it accelerated and left;

x) During the first days of May 2006, at 10.00 p.m. approximately, Gloria Giralt de García-Prieto was coming back home from the house of her daughter, María de los Ángeles García-Prieto de Charur, accompanied by Ernesto Acosta. About one hundred meters before reaching her house, Mrs. Giralt de García-Prieto and Mr. Acosta saw a dark red car, of the 4x4 type, parked; two strangers were inside it. When they drove past said car, it was started with the lights turned off, and therefore Mrs. Giralt de García-Prieto blew the horn several times so that the garage door were opened immediately. When hearing the horn, Jaime Valencia and José Mauricio García-Prieto went out of the house holding guns, and Mrs. García-Prieto could enter the house rapidly. When passing by the front of García-Prieto's home, the people in the car crouched and went on driving along the street, but always with turned off lights;

xi) On May 17, 2006, two strangers, holding short guns (revolvers), came to San Mauricio estate, located at San Miguel Department and owned by the García-Prieto-Giralt family; the strangers "asked Anacleto Moya, the guard of the above-referred premises, ¿when will [...] Mauricio arrive? As Moya told them Mauricio was ill and so he would not go to the premises, the strangers left without explaining why they were looking for him;"

xii) From June 12 to July 24, 2006, the García-Prieto spouses left the country. When they returned, on July 24, 2006, the strangers went on making anonymous telephone calls during the early mornings, and

consequently the spouses decided to turn off the telephone bell during the night;

xiii) On the other hand, an officer of the Third Investigation Court of San Salvador that was hearing the case, reported that he had received threats in his pager. While he was taking the statement to one of the indicted persons in the case, he received an anonymous and threatening message; and

c) the IDHUCA officers have received anonymous and threatening telephone calls and text messages, to wit:

i) On October 4, 1995, José Benjamín Cuéllar-Martínez, director of IDHUCA, counselor of the García-Prieto-Giralt family, Simon Ayala-Vigil and Luis Romeo García-Aleman, were robbed by two armed men while they were in the premises of IDHUCA;

ii) On September 14, 2005, at 01.18 p.m. and on December 25, 2005, at 01.04 p.m., José Benjamín Cuéllar-Martínez received a text message on his mobile phone, each day. The calls were made from telephone number 79-75-48-06;

iii) On December 25, 2005, three messages were received by a mobile telephone registered to the name of Matilde Guadalupe Hernández de Espinoza, but used by her husband, Paulino Espinoza. The messages had been sent from telephone number 79-75-48-06;

iv) On March 15 and 25 and April 10, 2006, in the cell phones of José Benjamín Cuéllar-Martínez and José Roberto Burgos-Viale, lawyers of IDHUCA, text messages were received from telephone number 78-60-15-15, at 02:40 p.m., at 01.00 p.m. and at 06.00 p.m. respectively; and

v) On April 12, 2006, when José Benjamín Cuéllar-Martínez had gone abroad on vacation, José Roberto Burgos-Viale received a call in his cell phone but the number of the incoming call did not appear in the cell phone display. When answering the call, a stranger shouted at him: "[...], and human rights do not allow you to afford a trip? We gonna kill you!"

4. The Commission's conclusion in the sense that

[...] several members of the García-Prieto family and their legal representatives were threatened, followed, harassed and attacked, both personally and in their property. The next of kin of Ramón Mauricio García-Prieto-Giralt and their legal counselors deem said threats are the consequence of their ongoing attempt to get justice done and of the fact that one of the perpetrators of the murder of Ramón Mauricio García-Prieto-Giralt and the masterminds have not been punished. Furthermore, other persons related to the proceedings, such as the lawyers and court officers, have also received threats and pressures.

[...] The lack of a court determination of the origin of said threats and attacks is an element that increases the risk of the beneficiaries of the measures hereby requested. The Commission has sustained, in a statement that is applicable to this request, that the most efficient means to protect the defenders of the human rights in this part of the world is to effectively investigate the acts of violence committed against them and to punish those responsible for them.

5. The extreme seriousness and urgency reasons presented by the Commission regarding the situation of the next of kin of Ramón Mauricio García-Prieto-Giralt and their legal counselors, as said persons have received several "threats of death" during the effectiveness of the provisional measures ordered by the Commission. It

was pointed out that “although the State has adopted protection measures in favor of the beneficiaries [of the provisional measures], in view of the information furnished by the latter and even by the State itself regarding the implementation of the provisional measures, it is evident that the protection granted is not adequate enough to safeguard their lives and personal integrity.” The Commission added that “it is expected that the Court will call a public hearing on this matter: it should be pointed out that the call to public hearing by the Commission, or in the domestic jurisdiction, has generally coincided with an intensification of the acts against the beneficiaries [...].” Moreover, the Commission referred to the design and implementation of the protection measures that the State must adopt, inter alia, that the persons assigned to give protection to the beneficiaries should be adequately trained and have the necessary equipment to repel a possible attack and that a permanent and special protection must be provided at the place of residence of the beneficiaries, as well as at the premises of IDHUCA.

6. The request of the Commission to the Court so that the latter ask the State to:

- a) [...] adopt forthwith all the measures necessary to guarantee the life and personal integrity of the beneficiaries in accordance with the requisites and modalities described in this request [...].
- b) [...] carry out serious, complete and speedy investigations into the intimidating actions, harassment and attacks perpetrated against the beneficiaries; to identify the persons liable therefor and impose the corresponding punishments as deterrent mechanism to avoid the repetition of threats or the happening of irreparable damage to the beneficiaries;
- c) [...] inform forthwith on the progress and outcome of the investigations made to identify and punish the persons liable for the acts that originated this request; and
- d) [...] allow the beneficiaries to participate in the design and implementation of the measures.

CONSIDERING:

1. That El Salvador has been a State Party to the American Convention since June 23, 1978 and, pursuant to Article 62 of said Convention, it recognized the jurisdiction of the Court on June 6, 1995.

2. That Article 63(2) of the Convention provides that

[i]n cases of the utmost seriousness and urgency, and when necessary to avoid irreparable damage to persons, the Court, in the cases tried by it, may order the provisional measures it may deem convenient. In cases that have not been yet submitted to its jurisdiction, the Court shall be able to act upon the Commission’s request.

3. That regarding this issue, Article 25 of the Rules of Procedure provides as follows:

- 1. 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.

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

[...]

6. The beneficiaries of provisional measures or urgent measures ordered by the President may address their comments on the report made by the State directly to the Court. The Inter-American Commission on Human Rights shall present observations to the State's report and to the observations of the beneficiaries or their representatives

[...]

4. That Article 1(1) of the Convention sets forth the general obligation of the State Parties to respect the rights and liberties enshrined therein and to guarantee their free and full enjoyment by any person under its jurisdiction. In the same sense, the position of the State as guarantor of the rights of the persons under its jurisdiction is pointed out. These obligations are even more evident when related to persons involved in proceedings before the surveillance bodies of the American Convention.¹

5. That the matter where the Commission has filed its request is heard on the merits by the Court and, notwithstanding said fact, the ordering of provisional measures does not imply a decision on the merits of the case existing between the petitioner and the State. In ordering the provisional measures, this Court is only guaranteeing that the Court may duly exercise its powers under the Convention in cases of extreme seriousness or urgency, where protective measures are necessary to avoid irreparable damage to persons.²

6. That the purpose of the provisional measures, in the domestic legal systems (domestic law of procedure), generally, is to preserve the rights of the litigants, thus ensuring that the execution of the judgment on the merits is not impaired or obstructed by the actions of said litigants, *pendente lite*.³

7. That in the International Human Rights Law, the provisional measures not only have a preventive nature, as they preserve a certain legal status, but also –and mainly– a protective nature, since they protect human rights as long as they are intended to prevent irreparable damage to persons. Provided the basic requirements of extreme seriousness and urgency, and the prevention of irreparable damage to

¹ Cf., *inter alia*, *Matter of Millacura Llaipén et al. Provisional Measures*. Order of the Inter-American Court of Human Rights of July 6, 2006, Considering clause No. 4; *Matter of Mery Naranjo et al. Provisional Measures*. Order of the Inter-American Court of Human Rights of July 5, 2006, Considering clause No. 6; *Matter of Guerrero-Gallucci and Martínez-Barrios*. Provisional Measures. Order of the Inter-American Court of Human Rights of July, 4, 2006, Considering clause No. 4.

² Cf. *Matter of Mery Naranjo et al. Provisional Measures*, *supra* note 1, Considering clause No. 7; *Matter of Guerrero-Gallucci and Martínez-Barrios*. Provisional Measures, *supra* note 1, Considering clause No. 14; and *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, Considering clause No. 7.

³ *Matter of Mery Naranjo et al. Provisional Measures*, *supra* note 1, Considering clause No. 4; *Matter of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures, *supra* note 2, Considering clause No. 4; and *Matter of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures. Order of the Inter-American Court of Human Rights of January 13, 2006, Considering clause No. 4.

persons are met, provisional measures are an effective judicial guarantee with preventive nature.⁴

8. That the States must give effective and adequate guarantees to human rights defenders so that they may perform their tasks freely, and that it is convenient to especially monitor actions that may restrict or obstruct their actions since said actions are a positive contribution and supplement the efforts made by the State in its capacity of guarantor of the rights of the persons under its jurisdiction.⁵

9. That on June 20, 1997, the Inter-American Commission issued provisional measures by means of which it requested the State to adopt the measures necessary to protect the life and personal integrity of the next of kin of Ramón Mauricio García-Prieto-Giralt and their legal counselors; some of said measures are now effective for some of the beneficiaries (*supra* Having Seen clause No. 3(1)).

10. That pursuant to the information provided by the Inter-American Commission, despite the protective measures adopted by the State in accordance with the provisional measures ordered by the Commission, the next of kin of Ramón Mauricio García-Prieto-Giralt and their legal counselors "[o]n an ongoing basis and during several years, [...] have received very serious threats," and therefore, the measures adopted by the State "have clearly showed [...] to be insufficient to suppress the risk of irreparable damage" (*supra* Having Seen clauses No. 3, 4 and 5). The situation described by the Commission reveals, *prima facie*, the existence of a situation of extreme seriousness and urgency, where it is necessary to avoid irreparable damage to the rights to life and personal integrity of Gloria Giralt de García-Prieto, José Mauricio García-Prieto-Hirlemann, María de los Ángeles García-Prieto de Charur, José Benjamín Cuéllar-Martínez, Matilde Guadalupe Hernández de Espinoza and José Roberto Burgos-Viale. The *prima facie* assessment standard in a case and the application of presumptions in view of the need for protection made the Court order provisional measures in several cases.⁶

11. That this Court deems the protection of Gloria Giralt de García-Prieto, José Mauricio García-Prieto-Hirlemann, María de los Ángeles García-Prieto de Charur, José Benjamín Cuéllar-Martínez, Matilde Guadalupe Hernández de Espinoza and José Roberto Burgos-Viale is necessary through provisional measures, in the light of the provisions of the American Convention. Consequently, the State must grant the protection measures necessary to guarantee them their lives and personal integrity. Among such measures, the following are included: the granting of a permanent escort at the domicile of each one of the beneficiaries, as well as in the premises of the *Instituto de Derechos Humanos de la Universidad Centroamericana* (Human

⁴ Cf. *Matter of Millacura Llaipén et al. supra* note 1, Considering clause No. 5; *Matter of Mery Naranjo et al. Provisional Measures, supra* note 1, Considering clause No. 4; *Case of 19 Tradesmen. Provisional Measures. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 6.*

⁵ Cf. *Matter of Monagas Judicial Confinement Center ("La Pica"). Provisional Measures. Order of the Inter-American Court of Human Rights of February 9, 2006, Considering clause No. 14; Matter of Mery Naranjo et al. Provisional Measures, supra* note 1, Considering clause No. 8; and *Matter of the Forensic Anthropology Foundation. Provisional Measures. Order of the Inter-American Court of Human Rights of April 21, 2006, Considering clause No. 9.*

⁶ Cf. *Matter of Millacura Llaipén et al. Provisional Measures, supra* note 1, Considering clause No. 9; *Case of 19 Tradesmen. Provisional Measures, supra* note 4, Considering clause No. 13; and *Matter of the Forensic Anthropology Foundation. Provisional Measures, supra* note 5, Considering clause No. 10.

Rights Institute of the Central American University), and that the security personnel assigned be given special training and adequate equipment. Said escorts should not belong to the law enforcement forces that, pursuant to the beneficiaries' statements, might be involved in the events reported.

12. That the Commission requested the Court to adopt provisional measures in favor of Paulino Espinoza, however, from the information furnished, it cannot be asserted that there exists any threats against him, and therefore the Court considers that there is no evidence of any risk to his life or personal integrity.

13. That the State must carry out all actions necessary in order that the protection measures hereby ordered be planned and applied through a mutual agreement with the beneficiaries of said measures and their representatives, so that the result is the rendering of a diligent and effective protection.

14. That the State must establish the origin of the telephone calls received by the beneficiaries, in order to avoid further threats and harassment as those that prompt the adoption of these provisional measures.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Article 25 and 29 of its Rules of Procedure,

DECIDES:

1. To request the State to adopt forthwith the measures necessary to protect the right to life and personal integrity of the following persons: Gloria Giralt de García-Prieto, José Mauricio García-Prieto, María de los Ángeles García-Prieto de Charur, José Benjamín Cuellar-Martínez, Matilde Guadalupe Hernández de Espinoza, and José Roberto Burgos-Viale, inter alia, the assignment of permanent escorts in the domicile of each one of the beneficiaries, as well as at the premises of the *Instituto de Derechos Humanos de la Universidad Centroamericana* (Human Rights Institute of the Central American University), and that the security personnel be specially trained and provided with adequate equipment.

2. To request the State to allow the beneficiaries of these measures or their representatives, to participate in the planning and implementation of same and that, generally, keep them informed on the progress of the measures implementation.

3. To request the State to determine the origin of the telephone calls received by the beneficiaries, in order to avoid the repetition of the threats and harassment that prompted the adoption of these provisional measures.

4. To request the State to inform the Inter-American Court of Human Rights, within fifteen days as from the notice of this Order, on the measures adopted in compliance hereof.

5. To request the beneficiaries of these measures or their representatives to submit to the Inter-American Court of Human Rights, within a term of ten days as from the notice of the report of the State, the observations they may deem pertinent.

6. To request the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights, within fifteen days as from the notice of the report filed by the State, the observations it may deem pertinent, as well as the information requested in Considering clause number twelve.

7. To request the Secretariat of the Court to give notice of this Order to the Inter-American Commission on Human Rights, to the representatives of the beneficiaries and to the State.

Judge Antônio A. Cançado Trindade informed the Court on his Separate Opinion, which will be attached to this Order.

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

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. On this day, September 26, 2006, I have voted for the adoption of this Order of Provisional Measures by the Inter-American Court of Human Rights, in the *Matter of Gloria Giralte de García-Prieto et al.*, regarding *El Salvador* and, as did in the recent Order of the Court in a prior matter, *Mery Naranjo et al.*, regarding *Colombia* (of September 9, 2006), I feel obliged to add this Separate Opinion including my brief thoughts on some issues I am concerned for and that, during the last months, I have been expressing to the Court, in order to strengthen this preventive mechanism for rights protection. I am especially referring to some problems that have arisen under the American Convention, and which have derived from the co-existence of the provisional measures issued by the Inter-American Commission on Human Rights, and those ordered by the Inter-American Court, in the light of the mandatory principle of the direct access of individuals to international jurisdiction. Below, I include, though under the cruel pressure of time, my brief opinions on this matter, both of *lex lata* and of *lege ferenda*.

I. Brief reflections on *Lex Lata*

2. In this matter of *Gloria Giralte de García-Prieto et al.*, on June 20, 1997, the Inter-American Commission ordered its first provisional measures for the benefit of some next of kin of Ramón Mauricio García-Prieto-Giralte, their legal counselors from the Instituto de Derechos Humanos de la Universidad Centroamericana (Institute of Human Rights of the Central American University) (hereinafter, "IDHUCA", for its acronym in Spanish) and the witnesses involved in the investigation of his death, - and said measures were reiterated to the State on November 11, 2001. The Commission itself pointed out that, during the effectiveness of said provisional measures, José Mauricio García-Prieto and Gloria Giralte de García-Prieto, as well as their legal counselors, had received several threats of death.

3. In its recent request for Provisional Measures filed with the Court (yesterday, September 25, 2006), the Commission stated, as regards the implementation of the provisional measures, that "in effect, the protection granted is not adequate enough to effectively protect the life and personal integrity" of the beneficiaries (para. 39). Now, almost a decade after the order for provisional measures issued in the *cas d'espèce*, the Commission files with the Court a request for Provisional Measures for the Protection of the abovementioned persons.

4. The inadequate or unsatisfactory protection admitted by the Commission, which prompted it to request the Court the issuance of Provisional Measures of Protection in the instant case, has already occurred in several other cases, where the Commission insisted on ordering its provisional measures and only then, and due to the vulnerability of the potential victims, in extreme situations, did it request the Provisional Measures to the Court. A typical example of this situation can be found in the cases related to *Trinidad y Tobago*, on the death penalty (e.g., case *James et al.*), among several others.

5. In recent meetings held jointly by the Court and the Inter-American Commission, as well as in several public hearings held before this Court, and even during the Court's deliberations, I have expressed my deep concern for this practice and pointed out that, in certain cases, it is better to send the requests for Provisional

Measures of Protection *directly* to the Court, avoiding the prior insistence of the Commission on the application of its precautionary measures. This situation is aggravated when the Commission denies the precautionary measures requested by petitioners without sufficient grounds for denial and when petitioners are not allowed to resort to the Court since their cases are being heard by the Commission and not by the Court.

6. In my opinion, such cases may involve a denial of the right of access to international jurisdiction. Thus, I wish to point out in this Separate Opinion my personal views regarding this matter, now in the twilight of my time as Regular Judge of the Inter-American Court of Human Rights (*tempus fugit*). I do it in furtherance of the perfection of the significant preventive mechanism of protection involved in the American Convention, and without denying my vote of trust in the *common sense* of my colleagues, both of the Court and of the Inter-American Commission.

7. *First*, in my opinion, the prerequisite of the prior exhaustion of domestic remedies is not applied to the requests for Provisional Measures of Protection; said requisite is a condition to the admissibility of petitions by the Commission, regarding the merits (and contingent reparations) of the particular case. On the other hand, the Provisional Measures of Protection are heard in a summary proceeding, in accordance with the preventive/protective nature of said legal device, and as they do not involve a prejudgment on the merits of the case.

8. *Second*, in my opinion there is no need to exhaust the provisional measures of the Commission before resorting to the Inter-American Court and requesting Provisional Measures of Protection. I have stated so in my Separate Opinion annexed to a recent Order of the Court on Provisional Measures of Protection.⁷ Moreover, the provisional measures of the Commission are only grounded on regulatory rules, and not in a convention, and they cannot delay -sometimes for an indefinite time- the application of the Provisional Measures of Protection of the Court, which are grounded on conventional rules.

9. As I added in the above-cited Concurrent Opinion, "in any and every circumstance the protection obligation must prevail over the apparent institutional jealousy," and especially in situations of "chronic violence".⁸ The Commission's insistence on its practice of the prior precautionary measures may, in some cases, have prejudicial consequences for the potential victims, and create another obstacle for them to overcome. In certain cases, it may involve a denial of justice at international level.

10. *Third*, in case of denial of the precautionary measures by the Commission, such decision must be properly grounded. The decisions of the Commission and of the Court regarding both precautionary and provisional measures, respectively, must always be sufficiently grounded, as guarantee of the *principle of contradiction* -a general principle of law-, so that petitioners may feel confident that their case has been duly and adequately considered by the international body, and so that the

⁷. Cf. Inter-American Court of Human Rights [I/A Court H.R.], Order of 11.17.2005 in the *Matter of Children Deprived of Liberty in the "Complexo do Tatuapé" of FEBEM. Regarding Brasil*, Concurrent Opinion of Judge A.A. Cançado Trindade, para. 3.

⁸. *Ibid.*, para. 5.

meaning of the decision taken is clear⁹ (especially in an alleged situation of the utmost seriousness and urgency, with an alleged probability of irreparable harm to human beings).

11. A denial of precautionary measures by the Commission must always and necessarily be duly grounded. Besides, an additional groundless denial by the Commission to request Provisional Measures to the Court empowers the potential victims, as subjects of the International Law on Human Rights, to resort to the Court seeking the issuance of Provisional Measures; otherwise, it could imply a denial of justice at international level.

12. *Fourth*, if in view of the two denials of the Commission, the individual/petitioner involved resorts to the Court, and the latter abstains from adopting any decision due to the alleged lack of conventional grounds (as the matter is pending before the Commission and not before the Court) or regulatory basis, - even in order to fill this apparent legal loophole and change the present situation (based on *praeter legem* equitable considerations), a denial of justice at international level could arise. In other two recent cases I warned the Court on this issue.¹⁰

13. At the present time, I cannot detect in the Commission or in the Court any willingness to give the "qualitative jump" I am proposing. Moreover, I deem that, if the present insensitivity (on this specific issue) had prevailed in said two bodies responsible for monitoring the compliance with the American Convention, in year 2000, perhaps some regulatory amendments made in furtherance of the strengthening of the individuals' right of direct access to international courts under the American Convention system, that is, their access to international justice, would not have been possible.

II. Brief Reflections on *De Lege Ferenda*

14. Thus, - and, alike Ionesco's rhinoceros, *je ne capitule pas*, - in this Separate Opinion, I will insist on my reasoning -as I have recently done before the Court,- in favor of the individuals' full access to international justice under the framework of the American Convention. Now, I shall refer to the Bases for a Draft Protocol to the American Convention on Human Rights to Strengthen Its Mechanism for Protection, which I prepared (as Rapporteur of the Court) and submitted (as President of the Court) to the Organization of American States [OAS] on May 2001,¹¹ and which have always been included in the agenda of the OAS General Assembly (as shown by the Assembly of San José de Costa Rica in 2001, of Bridgetown/Barbados in 2002, of Santiago de Chile in 2003, and Quito in 2004), and are still included in the

⁹. Cf. [Various Authors,] *Le principe du contradictoire devant les juridictions internationales* (eds. H. Ruiz Fabri and J.-M. Sorel), Paris, Pédone, 2004, pp. 14, 33, 81, 86, 118 and 168.

¹⁰. Cf. I/A Court H.R., matter of the *Brothers Dante, Jorge and José Peirano Basso, regarding Uruguay*, letter of the Judges A.A. Cançado Trindade and M.E. Ventura Robles to the President of the Court, of 07.07.2006, doc. CDH-S/1181, pp. 1-2; matter of *Loretta Ortiz Ahlf et al. Mexican Citizens, regarding Mexico*, letter of Judge A.A. Cançado Trindade to the President of the Court, of 09.19.2006, doc. I/A Court H.R., /1641, p. 1.

¹¹. Cf. A.A. Cançado Trindade, "Bases for a Draft Protocol to the American Convention on Human Rights to Strengthen Its Mechanism for Protection", vol. II, 2a. ed., San José de Costa Rica, Inter-American Court of Human Rights, 2003, pp. 1-1015.

corresponding documents of the OAS for the two-year period 2005-2006.¹² I hope that in the near future they will generate specific results.

15. In the above-referred documents, I proposed, *inter alia*, that in my opinion, *Article 77* of the Convention should be amended so that not only any State Party and the Commission, but also the Court, would be entitled to submit Projects of Additional Protocols to the American Convention –as it naturally corresponds to the highest surveillance body of said Convention,– in order to increase the number of rights protected by the conventions and to strengthen the mechanism of protection established by the Convention.¹³

16. Furthermore, and taking into account the current position of the human being as subject of International Law of Human Rights (and, in my opinion, of the International Public Law), I sustained that *Article 61(1)* of the Convention should have the following wording:

- "The States Parties, the Commission and the alleged victims shall be entitled to submit a case to the Court."

And, following the same line of thought, I wish to add in this Separate Opinion, the additional proposal that *Article 63(2)* of the American Convention should also be materially amended and therefore its text would be as follows:

- "In cases of extreme seriousness and urgency, and when it is necessary to avoid irreparable damage to persons, the Court, in the cases pending before it, shall be able to order the provisional measures it may deem convenient. In cases not yet submitted to the Court, it shall be able to act upon request of the Commission or of the alleged potential victims."

17. In the mechanism of protection of the American Convention, the right to individual petition shall be fully achieved when said right may be directly exercised by petitioners before the Inter-American Court of Human Rights. This is the reason of my proposal to amend *Article 61(1)* of the Convention, *encompassing also the amendment of Article 63(2), under certain circumstances, as regards Provisional Measures of Protection*. In my opinion, such amendment is fully justified, especially if the alleged circumstances of extreme seriousness and urgency and the alleged probability of irreparable harm to persons are present.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary

¹². OAS, document AG/RES.2129 (XXXV-0/050), of 06.07.2005, pp. 1-3; OAS, document CP/CAJP-2311/05/Rev.2, of 02.27.2006, pp. 1-3.

¹³. I further pointed out that the Statute of the Inter-American Court (of 1979) needs several amendments (which I described in the above-referred document). Moreover, I added that *Articles 24(3) and 28* of the Statute should be amended: in *Article 24(3)*, the words "shall be delivered in public session and" should be eliminated; and in *Article 28*, the words "shall appear as a party," should also be eliminated.