

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF OCTOBER 25, 2012**

PROVISIONAL MEASURES WITH REGARD TO GUATEMALA

CASE OF CARPIO NICOLLE *ET AL.*

HAVING SEEN:

1. The Orders of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of June 4, 1995, September 10, 1996, September 19, 1997, June 19, and November 27, 1998, September 30, 1999, September 5, 2001, July 8, 2004, and July 6, 2009. In the last Order, the Court decided, *inter alia*:

1. To call upon the State to maintain and adopt such measures as may be necessary to continue protecting the life and personal integrity of Karen Fischer, Daniela Carpio Fischer, Rodrigo Carpio Fischer, Martha Arrivillaga de Carpio, Jorge Carpio Arrivillaga and Rodrigo Carpio Arrivillaga, and Abraham Méndez García, his wife and children [...];

2. To call upon the State to forward the Court the report mentioned in considering paragraph 31 of th[e] Order, as well as information on the implementation of the measures [...];¹

3. To call upon the beneficiaries' representatives and the Inter-American Commission to submit any observations they deem relevant on the report mentioned in the preceding operative paragraph within four weeks of receiving the said report [...], and

4. To remind the State that it must continue allowing the beneficiaries to participate in the planning and implementing of the protective measures and, in general, keep them informed of any progress made in the said measures.

2. The briefs of November 2, 2009, July 18, September 22 and December 14, 2010, April 4, 2011, and February 20, 2012, in which the Republic of Guatemala provided its reports on implementation of the provisional measures

3. The briefs of December 18, 2009, August 23 and October 28, 2010, February 9, April 1 and May 31, 2011, and April 2, 2012, and their attachments, in which the Center for Justice and International Law (CEJIL) forwarded its observations on the State's reports on compliance.

¹ The Court ordered the State to present "a report in which it: (a) identifies and establishes differences in the risk level of each person mentioned in the preceding considering paragraph; (b) carefully assesses each individual situation, the existence, characteristics, and origin or source of the risk, and (c) defines in a timely manner the specific means and measures of protection that are adequate and sufficient to avoid the risk, if it exists, from materializing."

4. The brief of July 6, 2012, in which CEJIL informed the Court that it “ha[d] ended its role as representative of the victims” and of the beneficiaries of the provisional measures in the case in question.

5. The briefs of January 19, September 2 and November 12, 2010, March 23 and June 2, 2011, and May 9, September 25 and October 16, 2012, in which the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) forwarded its observations on the reports of the State, the observations of CEJIL, and the briefs of Karen Fischer (*infra* having seen paragraph 9).

6. The notes of the Secretariat of July 10 and 26, August 22 and September 14, 2012 in which, on the instructions of the President of the Court, all the beneficiaries of the provisional measures were asked to specify who would be representing before this Court. They were also asked to provide the contact details of the said persons, as well as the single address to which communications concerning the provisional measures relating to this case could be forwarded. In addition, they were advised of the characteristics required of their observations on the State’s reports.

7. The notes of August 22 and September 13, 2012, in which the Secretariat, on the instructions of the President of the Court, asked the beneficiaries to provide the Court with current information on whether or not the situation of extreme gravity and urgency to avoid irreparable harm persisted that had given rise to the adoption of these provisional measures so that the Court could assess the pertinence of maintaining the provisional measures issued in relation to this case.

8. The brief of August 3, 2012, in which Karen Fischer advised, by a notarized power of attorney, that she would represent Mario Arturo López Arrivillaga and Daniela Carpio Fischer. In this brief, Mrs. Fischer indicated that “[her] son [...] lives in Spain.”

9. The briefs of July 16, August 22, September 6 and October 4, 2012, in which Karen Fischer provided information on some problems in the implementation of the security system and regarding the alleged persistence of her situation of risk.

10. The note of the Secretariat of October 19, 2012, reminding the beneficiaries of the provisional measures that they had not presented the information requested in previous communications and that the Court in plenary would be advised of this situation.

11. The brief of October 19, 2012, in which Abraham Méndez provided information on the alleged persistence of extreme gravity and urgency for himself and his family. In addition, he indicated that he would represent himself in the proceeding on provisional measures.

12. The note of the Secretariat of October 22, 2012, in which it asked the State to forward observations on the brief sent by Mr. Méndez. The said observations had not been presented when this Order was issued.

CONSIDERING THAT:

1. Guatemala has been a State Party to the American Convention on Human Rights (hereinafter “the Convention” or 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.” This provision is also regulated in Article 27 of the Rules of Procedure of the Court.²

3. According to Article 63(2) of the Convention, the State is obliged to adopt the provisional measures ordered by the Court, because a basic principle of international law, supported by international jurisprudence, has indicated that States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).³

4. Under international human rights law, provisional measures are not merely preventive, in that they preserve a juridical situation, but rather they are essentially protective, since they protect human rights, inasmuch as they seek to avoid irreparable damage to persons. Provided that the basic requirements of extreme gravity and urgency and the prevention of irreparable damage to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.⁴

1. Regarding the representation of the beneficiaries

5. As indicated (*supra* having seen paragraph 4), on July 6, 2012, CEJIL concluded its role as representative of the beneficiaries of these measures. Consequently, the Secretariat of the Court, on the instructions of the President, asked the beneficiaries of the measures to specify how they would exercise their representation and the corresponding contact information. The only beneficiaries who have responded to the Court’s requests are Karen Fischer, who said she would represent herself and her daughter, Daniela Carpio Fischer, and Abraham Méndez, who said that he would represent himself.

6. The Court has emphasized the particular importance of the observations of the beneficiaries’ representatives on the information provided by the State in the proceedings on the implementation of provisional measures. These observations are essential for the assessment of implementation, taking into account the gravity of the situation and the specific circumstances of the risk to the beneficiaries.⁵ However, in this case, despite several communications addressed to them by the Court, most beneficiaries have not provided information on the current situation of the implementation of the provisional measures, how they will be represented before the Court, and whether or not the situation persists of extreme gravity and urgency to avoid irreparable harm to them. This omission

² The Court’s Rules of Procedure adopted at its eighty-fifth regular session held from November 16 to 28, 2009.

³ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of June 14, 1998, sixth considering paragraph, and *Matter of Gladys Lanza Ochoa*. Provisional measures with regard to Honduras. Order of the Inter-American Court of Human Rights of June 28, 2012, second considering paragraph.

⁴ Cf. *Case of the “La Nación” Newspaper*. Provisional measures with regard to Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, fourth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Inter-American Court of Human Rights of June 26, 2012, fourth considering paragraph.

⁵ Cf. *Matter of the Communities of the Jiguamiandó and the Curbaradó*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 7, 2006, seventeenth considering paragraph.

by the beneficiaries will be taken into account when assessing whether the Court is justified in maintaining these provisional measures.

2. *Regarding the implementation of the provisional measures*

7. The State provided information on “the measures of protection that the beneficiaries of these provisional measures have,” at this time:

a) Regarding the beneficiaries Abraham Mendez, his wife, and five children, the State advised that they were not receiving safety measures, because they had not agreed to these measures being provided by State agents. The State advised that, in the risk assessment made of Abraham Mendez, he requested that persons of his election be hired and that they be paid a fee by the Ministry of the Interior. The State indicated in some of its reports that it was “willing to propose a list of police agents who [could] be considered suitable for the safety of the beneficiaries, and who were extremely upright and capable.”

b) Regarding the beneficiary Jorge Carpio Arrivillaga, the State advised that he has had a personal security system since 2004; the “security is provided by the actual Personal Protection and Security Division of the National Civil Police.” It added that two agents of the National Civil Police had been assigned to him. The State also advised that he had requested one more agent for the security of himself and his family circle;

c) Regarding the beneficiary Martha Arrivillaga, Mr. Carpio’s widow, the State advised that her personal security is provided by a security agent. The State advised that “she has been assigned an agent to provide her with personal security services since July 2, [2010,] who was chosen by Mrs. Arrivillaga from the two agents proposed by the National Civil Police.” According to the State, the beneficiary has indicated that she feels safe and is satisfied with the service provided by the agent.

d) Regarding the beneficiary Karen Fischer, the State advised that she had personal security measures provided by five private individuals. The State indicated that “the contract of one of the private agents who provided security was terminated at the beneficiary’s request, and another agent resigned for health reasons.” The State indicated that, in 2010, Mrs. Fischer was informed that “following a thorough analysis and reports, [...] it was determined that [the] Ministry was unable to hire the person requested by the beneficiary.” In addition, it indicated that, on different occasions, she had been informed of the impossibility of the State hiring “anyone who was not a member of its institutions, and [that] members of the National Civil Police had been offered; however, the offer ha[d] been rejected.” The State indicated that it was willing “to propose a list of members of the police force who could be considered suitable to ensure Mrs. Fischer’s safety.”

e) Regarding the beneficiary Daniela Carpio Fischer, the State advised that her personal security is provided by a private agent. It indicated that it had interviewed Daniela Carpio in November 2009 and, at that time, “she did not report any incident that might suggest a threat. [...] She stated that, owing to the high crime rate and insecurity prevailing in the country, she requested that she be assigned two agents as personal security, divided into two groups, to accompany her to all her activities,” and

f) Regarding the beneficiaries Rodrigo Carpio Fischer and Rodrigo Carpio Arrivillaga, the State indicated that "no type of security is being provided, because they do not reside in Guatemala. The State [would] coordinate the necessary security while they are in Guatemala, provided the beneficiaries give them sufficient notice."

8. Originally, the State indicated that "actions, such as assigning unofficial agents, private individuals who are not members of the State's security agencies, to the security systems reduced the guarantee that the system was adequate." It indicated that it "is unable to increase the permitted expense by hiring agents who are not members of its official agencies, as it already has resources to implement the security measures." Nevertheless, in July 2012, the State advised that it had "decided, after a series of procedures, to hire as State employees the agents who, until then, had been working as private security agents paid by the State." In addition, it reiterated that "the collaboration of Abraham Mendez was required in order to reach consensus on the mechanisms to implement for his security."

9. In observations made before ceasing to represent the beneficiaries, CEJIL indicated that the beneficiaries had stated that they "were concerned with regard to their safety since the reopening of the investigations in 2009, because this is a high profile case, owing both to the significance of Mr. Carpio Nicolle in Guatemala, and also to the people who are allegedly involved in the facts of the case." The beneficiaries also indicated that "the fact that the beneficiary, Jorge Carpio, has the same name as his father is an additional risk factor."

10. CEJIL argued that the State had "never analyzed an appropriate definition of the specific, adequate, and sufficient means and measures of protection to avoid the risk."

11. CEJIL indicated that Karen Fischer had "stated that five agents [were] indeed assigned for her personal safety." The beneficiary recalled that "it has not been possible to fill the vacancies in her security system because the profiles of the security agents proposed by the Ministry of Interior in February 2011 were not satisfactory." She reiterated that she "d[id] not consider it appropriate for the security measures to be implemented by members of the National Police because the agents assigned to her several years ago had criminal records."

12. On July 6, 2012, Karen Fischer advised that, on May 21, 2012, she had informed the Ministry of the Interior that "the former Minister of the Interior had only signed the contracts of [her] security agents and that of [her] daughter, Daniela Carpio Fischer, for three months: January, February, and March," and she indicated that "the agents [were] working for free as of April." She stated that "[she] and Daniela communicate[d] daily with the Minister of the Interior's office without obtaining a response." In addition, on July 6, 2012, she again advised about the situation of "non-payment of [her] security agents," who had not received a salary since April. In communications of August, September and October 2012, Mrs. Fischer reiterated these problems regarding the implementation of the security measures.

13. The Commission reiterated that "the information submitted by the State does not allow it to be inferred that the provisional measures granted are being implemented effectively, because the information provided omits the concerns described by the representatives of the beneficiaries in briefs presented since 2009." It indicated its "concern" that, for six years, the protection in favor of Mr. Mendez had not been implemented and the alleged threats and harassment against him had not been

investigated. It stated that although, in the past, Mr. Mendez had refused "protection by State agents since he identified them with the threats he had received," "as the State had advised in relation to the protection for Mrs. Fischer, there appeared to be ways to respond to the concerns of Mr. Mendez." It added that, owing to the insecurity that Mr. Méndez and his family had indicated in relation to the National Police on several occasions, it was very important that the beneficiaries should have complete confidence in their security agents and, consequently, considered it "essential that the State provide information on the availability of protection options other than the National Police." Also, it indicated that Daniela Carpio Fischer had one security agent, so that "she would be unprotected when he is not on duty."

3. *Regarding the extreme gravity and urgency of avoiding irreparable harm to the beneficiaries*

14. Regarding the situation of the beneficiaries of the provisional measures, among other acts of intimidation and threats, the Court has been informed of the following:

a) On October 16, 2009, two security agents assigned to protect Karen Fischer were shot at as they were driving their truck in Guatemala City. A vehicle tried to pass them on the right-hand side and an individual in this vehicle fired three shots hitting different parts of the truck. The driver "accelerated and was able to lose the vehicle with the attackers; however, on making a left turn, he lost control of the truck and hit a tree." After this incident, Mrs. Fischer advised that unidentified individuals called her home constantly and would then hang up, which she considered "an evident act of intimidation";

b) On March 1 and 2, 2010, Karen Fischer had allegedly received death threats by telephone. On those dates, a man called her several times claiming to be the leader of a band of paid assassins and to have received orders to kill her. He also indicated that he had information about the places of residence of Karen Fischer's mother, her daughter Daniela Carpio Fischer, and her son Rodrigo Carpio Fischer. According to CEJIL, Mrs. Fischer indicated that she had met with members of the Presidential Commission for the Coordination of Human Rights Policy (hereinafter "COPREDEH"), the Public Prosecutor's Office, the National Civil Police, and the Ombudsman's Office and that "only the latter institution paid any attention to the situation;

c) Mrs. Fischer advised that, on October 2, 2012, "an official asked her for her personal papers and those of the vehicle, then suddenly began to speak to her in English; she then identified herself, and they told her that they would take her to the *"bodeguita"* [cellar];

d) In March 2011, Abraham Mendez had been the victim of two acts of intimidation and threat. According to CEJIL, Mr. Mendez indicated that his wife answered a telephone call by one of the telephones in their residence. He stated that, upon picking up the receiver, she heard the voice of an unknown adult male who insisted on talking to him; his wife therefore transferred the call to him. After the beneficiary had identified himself, the man asked him several times if he was able to provide him with the prices of coffins for five youths living in the area. Mr. Abraham associated this with his five sons, and therefore informed the caller that he intended to report this threat to the authorities. The call was then cut off abruptly;

e) CEJIL advised that, in March 2011, while Abraham Mendez was walking in the residential area where he lives in the early hours of the morning, he passed a man sitting on a swing, accompanied by a bulldog. The animal immediately set upon him three times; consequently, Mr. Mendez told the owner that the animal was dangerous before continuing on his way. When the beneficiary was about to reach the bus stop to go to the city center, he realized that the same unknown man had followed him in, a car and when he reached Mr. Mendez, he addressed him and told him that "in Guate, judges die," and

f) On October 19, 2012, Abraham Méndez advised that he had been subjected to "threats and similar acts to those that occurred in 2010, 2011 and 2012, consisting in telephone calls that jeopardized [his] vulnerable situation," as well as that "of his sons and his wife; in other words, the family circle; to the extent that, in 2012, he had suffered another threat; in that case one that sought to underline his wife's vulnerability." He added that the State had assumed an "irresponsible and indifferent attitude" with regard to his situation. He indicated that he "consider[ed] it essential to maintain the provisional measures issued for himself and his family in force, especially now that the proceedings have been opened during which the murder of Jorge Carpio Nicolle and his companions will be investigated, which increases [his] vulnerability."

15. CEJIL argued that Abraham Mendez had indicated that, owing to the reopening of the case in which he acted as prosecutor he "had been stigmatized and followed." In addition, it alleged that the State had "not indicated or provided any elements that would reveal that it had determined and assessed the level, characteristics and origin of the risk" to the beneficiaries and that, "in addition, it has not referred to the reopening of the criminal proceeding and the media coverage that this has received, or the way in which this could affect the safety of the beneficiaries." It declared that "it is scarcely conceivable that the measures of protection indicated by the State constitute an adequate protection system" for the beneficiaries. It added that "while the source of the risk has not been identified, the situation of insecurity remains in which they are and may be victims of new threats." CEJIL emphasized that both the wife of Mr. Mendez and their five minor children are subject to the same risk factors as he is.

16. The State reported that the alleged "lack of grounds for the risk assessments [had been] forwarded to those in charge of making the risk assessments, and the Ministry of the Interior had been asked to provide the criteria, parameters and indicators taken into account in the analysis made of the beneficiaries' situation, namely: (a) level of risk; (b) recent threats suffered by some beneficiaries; (c) stage of the criminal proceedings; (d) those possibly indicted in the case, and (e) possibility of reprisals against the beneficiaries." It underscored that "there have been no changes in the situation of the beneficiaries" and that "the situation has continued normally with no evidence of increased risk." It stressed that it "hopes that [its] compliance with the provisional measures to provide protection to the beneficiaries is noted." It indicated that "the investigations have not yet determined who is responsible for the telephone calls received with death threats against Karen Fischer. Also, that "even though [it] has the obligation to investigate the facts brought to its attention regarding the incidents that the beneficiaries have experienced, it is also true that the latter [must] prove [...] the factors based on which they consider that their personal integrity remains in circumstances of extreme gravity and urgency."

17. The Commission reiterated that "it should not be assumed that the absence of recent threats to most of the beneficiaries implies that the situation of risk has disappeared." It considered that "the measures adopted could have contributed to the protection of

beneficiaries." It indicated that "since Mrs. Fischer participates in the investigation procedures in the Carpio Nicolle case, which has been reactivated, it would be pertinent for the beneficiary and her representatives to continue coordinating with the State the necessary measures concerning her protection." The Commission also observed that "the State did not update the information on the risk assessment or explain the methodology used to determine that there had been no variation in the situation of the beneficiaries." It added that "the risk to the beneficiaries continues, as revealed by the threats against Abraham Mendez and his family" in 2009 and 2011, and "the threats received constantly by Karen Fischer." It considered that "this continued risk has been increased by the reopening of the investigations in the Carpio Nicolle case," as well as the lack of effective protection of all beneficiaries. Furthermore, it indicated that the State should provide "urgently, protection for Mr. Méndez García and his family." It also indicated that "[t]his protection is even more necessary based on the presumed death threats received in 2011, the absence of an investigation into them, and the reopening of the domestic proceedings, owing to Mr. Méndez García's participation in the proceedings in the past."

4. *Regarding the investigation of the facts*

18. With regard to the investigation of the facts that gave rise to these measures, the State advised that the events of June 19 and 20, 2004, concerning an "alleged attack on Karen Fischer and supposed threats" were being investigated. The Public Prosecutor's Office had provided information on the preliminary considerations in the case, according to the report of August 2, 2004, prepared by the investigation experts of the Criminal Investigation Directorate, which determined: "(i) that contradictions exist between the accounts of the events denounced and the results of the investigation; (ii) the complainants did not provide sufficient information, did not provide the license plate number, [...] or the necessary characteristics to be able to identify the persons who supposedly committed the act, and (iii) the neighbors closest to the scene of the incident, stated that they had not seen or heard anything related to the incident denounced."

19. In its report of July 18, 2010, the State indicated that, according to information from the Public Prosecutor's Office, "it ha[d] not been possible to make any progress in the investigations owing to lack of further information from the complainants, who have been summoned to provide information relating to the case so that it can be investigated." Regarding Mr. Méndez, the State indicated in its latest report that "to be able to take action in relation to the acts that have occurred against [him]," "it [was] necessary that, in keeping with the law, a criminal action be filed before the competent organs and, after this, investigation measures can begin."

20. CEJIL indicated that, "during the processing of these provisional measures, the State [...] ha[d] not provided information on the adoption of effective measures to determine the source of the threats that gave rise to these provisional measures and, consequently, to prosecute and punish those responsible." Moreover, according to CEJIL, "the progress made in the investigation [...] is perhaps the factor that most clearly allows [this] Court to assess effectively the risk and conclude that it has decreased enough to permit the measures to be lifted." CEJIL indicated that the State "ha[d] not presented any information regarding the elucidation of the attack and the death threats suffered by Mrs. Fischer and her security agents in March 2010 and October 2009, respectively." In addition, it underlined that it had not received information on any possible progress in these investigations.

21. The Commission took note of the information presented by the parties. In addition, it assessed positively "the reopening of the investigations in the Carpio Nicolle case, and

hope[d] that the State w[ould] provide detailed and updated information on any progress in the investigations.” It reiterated its concern owing to the “omission of information concerning the investigation into the facts that gave rise to the provisional measures and into the alleged threats against Karen Fischer.” The Commission also emphasized “the lack of progress in the investigation into the harassment of the Mendez family in 2009.” In addition, it “observe[d] with concern that the State ha[d] indicated that it would be necessary for Mr. Méndez to file a criminal action, whereas the State had been made aware of the incident immediately.” Lastly, the Commission took note of the “security system implemented for the protection of the other beneficiaries.” Nevertheless, it indicated that “it was a matter of concern that [it] did not have any elements that [would] allow [it] to evaluate whether progress had been made in the investigations into the events that gave rise to the implementation of the provisional measures.”

22. Regarding the information provided by the State that it is investigating the facts denounced by CEJIL and some of the beneficiaries, the Court reiterates the State's obligation to investigate the facts as a measure to guarantee the rights to life and personal integrity. Despite this, in the context of these provisional measures, and as it has in other matters,⁶ the Court will not consider the effectiveness of the investigations, or the supposed negligence of the State in the investigations, because this is not part of the purpose of provisional measures.

5. Considerations of the Court concerning the pertinence of maintaining these provisional measures.

23. The Court recalls that Article 63(2) of the Convention requires that three conditions must be met for the Court to order provisional measures: (i) “extreme gravity,” (ii) “urgency,” and (iii) that the purpose is “to avoid irreparable damage” to persons. These three conditions are coexistent and must be present in every situation in which the Court's intervention is requested. Similarly, these three conditions must persist for the Court to maintain the protection ordered. If one of them has ceased to be valid, the Court will assess the pertinence of continuing the protection ordered.⁷

24. In addition, this Court has indicated that, when ordering measures of protection, the Court or its President uses *prima facie* criteria in order to assess these requirements and, at times, it may be necessary to apply presumptions based on the needs for protection.⁸ However, maintaining the measures of protection requires the Court to make a more rigorous assessment as regards the persistence of the situation that gave rise to them.⁹ In

⁶ Cf. *Matter of the Children and Adolescents deprived of liberty in the FEBEM “Tatuapé Complex.”* Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of July 3, 2007, seventeenth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic.* Provisional measures with regard to Dominican Republic. Order of the Inter-American Court of Human Rights of September 7, 2012, sixth considering paragraph.

⁷ Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, supra*, sixth considering paragraph.

⁸ Cf. *Case of Raxcacó Reyes et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of August 30, 2004, tenth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, supra*, twenty-fifth considering paragraph.

⁹ Cf. *Matter of the Kankuamo Indigenous People.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of April 3, 2009, seventh considering paragraph, *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic, supra*, twenty-fifth considering paragraph.

turn, the burden of proof and argument of the beneficiaries and of the Inter-American Commission will increase as time goes by without any new threats. Evidently, the fact that no new threats occur may be due precisely to the effectiveness of the protection provided or to the deterrent effect of the Court's Order. Nevertheless, the Court has considered that the passage of a reasonable period of time without threats or intimidation, added to the absence of an imminent risk, may lead to the lifting of the provisional measures.¹⁰

25. The Court must also take into account that, according to the Preamble of the American Convention, the international protection in the form of a convention "reinforce[s] or complement[s] the protection provided by the domestic law of the American States". Therefore, if it is proved that the State in question has developed effective protection mechanisms or measures for the beneficiaries of the provisional measures, the Court could decide to lift the provisional measures, delegating the protection obligation to the entity that bears the main responsibility: namely, the State.¹¹ If the Court lifts the provisional measures for this reason, under its obligation to ensure human rights, the State would have to maintain the protective measures it has adopted and that the Court found effective for as long as the circumstances warranted.¹²

26. From the information provided by the parties, the Court observes that, despite the measures ordered since the adoption of the Order of July 6, 2009, there have been reports of some incidents of intimidation, threats and acts of violence against some of the beneficiaries. Consequently, the Court reiterates that the State must provide the beneficiaries with the protection necessary to ensure their personal integrity, in accordance with the requirements under these provisional measures and as agreed with the beneficiaries. The State has advised that it has opened preliminary inquiries into some of the complaints made at the domestic level; thus, proceedings have been opened to investigate them.

27. Regarding the Carpio Fischer family, several incidents occurred in 2004, 2009 and 2010 against Karen Fischer and her security agents. These incidents are being investigated although, to date, they have not been elucidated. In addition, this Court notes that, regarding Daniela and Rodrigo Carpio Fischer, no incident has been reported since this Court ordered that they become beneficiaries of these provisional measures in the Order of the Court of July 8, 2004. Regarding the last incident reported by Mrs. Fischer, according to whom some officials had asked for her papers and had indicated that they would take her to the "*bodeguita*," the Court does not have sufficient evidence to consider that this was a threat associated with a situation of extreme gravity and urgency.

28. With regard to Abraham Mendez, his wife and children, the Court observes that acts of intimidation were recorded in 2004 and 2011. Consequently, twice, in August and September 2012, Mr. Méndez was asked to provide more details as to whether maintaining the provisional measures ordered in his favor was justified. When responding to this request, Mr. Méndez indicated that threats and acts of intimidation had occurred in 2010,

¹⁰ Cf. *Matter of Gallardo Rodríguez*. Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of July 11, 2007, eleventh considering paragraph, and *Matter of Ramírez Hinojosa et al.*, Provisional measures with regard to Peru, twentieth considering paragraph.

¹¹ Cf. *Matter of Luis Uzcátegui*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of February 20, 2007, thirteenth considering paragraph, and *Matter of Ramírez Hinojosa et al.*, Provisional measures with regard to Peru, twenty-first considering paragraph.

¹² Cf. *Matter of Ramírez Hinojosa et al.* Provisional measures with regard to Peru, twenty-first considering paragraph.

2011 and 2012. He stated that, in 2012, the threats alluded to his wife's situation of vulnerability (*supra* considering paragraph 14). However, the Court observes that, in the information provided by Mr. Méndez concerning incidents association with a situation of extreme gravity and urgency in 2012, there are no details regarding the circumstances of time, means and place that would allow the Court to reach a conclusion on the requirement of extreme gravity in order to maintain the provisional measures. In particular, no explanation was provided as to the exact nature of the threats received, in what way his wife's vulnerability was referred to, or other more precise information that would permit a more thorough analysis of the situation of his family group.

29. Regarding the Carpio Arrivillaga family, the Court observes that, since the issue of the Court's last order, no incident has been recorded that would jeopardize the personal integrity or life of the beneficiaries.

30. However, the Court reiterates¹³ that a supposed lack of investigation by the State does not necessarily constitute a circumstance of extreme gravity and urgency that warrants maintaining the provisional measures. In addition, at times, the obligation to investigate may continue over a considerable period of time, during which the threat or risk does not necessarily remain extreme and urgent. This Court has also indicated that the analysis of the effectiveness of the investigations and proceedings concerning the events that gave rise to the provisional measures corresponds to the examination of the merits of the case.¹⁴ In brief, non-compliance with the obligation to investigate is not *per se* a sufficient reason to maintain the provisional measures.

31. In addition, the Court observes that, in recent years, it has not received consistent, detailed and well-founded information on specific situations of risk to the beneficiaries, and it considers that the hypothetical risk of threats against them owing to their participation in the domestic criminal proceedings, together with the failure to clarify the events that gave rise to the adoption of the provisional measures in the instant case is insufficient to conclude that a situation of extreme gravity and urgency persists that could result in irreparable damage to the beneficiaries.

32. Based on all the above, as well as the fact that these provisional measures have been in force for 17 years, the Court considers it pertinent to lift the provisional measures granted in favor of the beneficiaries, taking into account that the Court has not been informed of any specific and clear elements relating to them that could be linked to the requirements for their continuation.

33. Regarding the obligation to investigate the denounced facts that resulted in these measures, Article 1(1) of the American Convention establishes the general obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all

¹³ Cf. *Case of Carpio Nicolle et al.* Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, twenty-fourth considering paragraph; *Case of the Plan de Sánchez Massacre*. Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 8, 2009, sixteenth considering paragraph, and *Case of Caballero Delgado and Santana*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 25, 2011, twenty-second considering paragraph.

¹⁴ Cf. *Matter of Pilar Noriega García et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of February 6, 2008, fourteenth considering paragraph; *Matter of the Peace Community of San José de Apartadó*. Provisional measures with regard to the Republic of Colombia. Order of the Inter-American Court of Human Rights of August 30, 2010, twenty-ninth considering paragraph, and *Case of Caballero Delgado and Santana*. Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of February 25, 2011, twenty-second considering paragraph.

persons subject to their jurisdiction the free and full exercise of those rights and freedoms. Consequently, irrespective of the existence of specific provisional measures, the State has the special obligation of guaranteeing the rights of those who are in a situation of risk and must promote the investigations required to elucidate the facts and, as appropriate, punish those responsible.¹⁵ In this investigation, the State concerned must make every effort to determine all the facts surrounding the threats and how they were expressed; to determine whether a pattern of threats exists against the beneficiaries or the group or entity to which they belong; to determine the objective or purpose of the threats, and to determine who is behind the threats and, as appropriate, punish them.¹⁶ Furthermore, the Court recalls that, in the context of monitoring compliance in this case, it will continue analyzing the State's obligation to remove all the factual and legal obstacles or mechanisms that maintain impunity in the *case of Carpio Nicolle et al.*, to grant the witnesses, judicial authorities, prosecutors, other agents of justice, and the next of kin of the victims sufficient guarantees of safety, and to use all available means to expedite the proceedings.

34. In any event, the Court recalls that if, in the course of the ongoing domestic investigations, some type of specific situation of risk or threat should occur that places the life or physical integrity of the beneficiaries at risk, the Court can analyze the situation in accordance with its authority under Article 63(2) of the Convention.¹⁷

35. Finally, the Court reiterates that provisional measures are exceptional in nature and are complementary to the general obligation of the States. In this regard, the presumptions that cause the Court to lift provisional measures can never imply that the State is relieved of its treaty-based protection obligations. Hence, the Court emphasizes that, irrespective of the existence of specific provisional measures, the State is obliged to guarantee the rights of the persons who were the beneficiaries of the said measures.¹⁸

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred upon it by Article 63(2) of the American Convention on Human Rights and Article 27 of its Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered in favor of Karen Fischer, Daniela Carpio Fischer, Rodrigo Carpio Fischer, Martha Arrivillaga de Carpio, Jorge Carpio Arrivillaga, Rodrigo Carpio Arrivillaga, and Abraham Méndez García, his wife and children, in accordance with the twenty-sixth to thirty-fifth considering paragraphs of this Order.

¹⁵ Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, third considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin in the Dominican Republic*, *supra*, forty-second considering paragraph.

¹⁶ Cf. *Case of Caballero Delgado and Santana*. Provisional measures with regard to Colombia, twenty-first considering paragraph.

¹⁷ Cf. *Case of Caballero Delgado and Santana*. Provisional measures with regard to Colombia, twenty-fourth considering paragraph.

¹⁸ Cf. *Case of Caballero Delgado and Santana*. Provisional measures with regard to Colombia, twenty-fifth considering paragraph.

2. To require the Secretariat of the Court to notify this Order to the State of Guatemala, the beneficiaries of these measures, and the Inter-American Commission on Human Rights.

3. To emphasize that the lifting of these provisional measures does not mean that the State need not comply with its obligations to respect and guarantee the rights of the beneficiaries with due diligence, in accordance with the thirty-third to thirty-fifth considering paragraphs of this Order.

4. To close the case file.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

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