

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF FEBRUARY 13, 2013**

**PROVISIONAL MEASURES WITH REGARD TO THE ARGENTINE REPUBLIC
MATTER OF MILLACURA LLAIPÉN *ET AL.***

HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of June 21, 2006, as well as the Orders of the Court of July 6, 2006, February 6, 2008, and November 25, 2011. In the latter, the Court decided, *inter alia*:

1. To lift the provisional measures in favor of Marcela Hernández ("wife of Marcos Torres"), Alberto Hayes, Noelia Hayes, Luis Alberto Fajardo, Silvia de los Santos, Verónica Heredia, Viviana Hayes, Sonia Hayes, Patricio Oliva and Gerardo Colín, in accordance with considering paragraphs 9 to 12 of th[e] Order.
2. To declare that the provisional measures granted in favor of Juan Pablo Caba and Walter Mansilla are no longer in effect, in accordance with considering paragraphs 29 to 33 of th[e] Order.
3. To reiterate to the Argentine Republic that, for eight months, it must maintain any measures that have been adopted and adopt any necessary measures to protect the rights to life and to personal integrity of María Leontina Millacura Llaipén, her children, Marcos and Valeria Torres, and her granddaughters, Ivana and Romina Torres and Evelyn Caba, as well as of Tamara Bolívar and Miguel Ángel Sánchez, in accordance with considering paragraphs 13 to 28 of th[e] Order.
4. To reject the request to expand these provisional measures to Iván Eladio Torres, Saúl Soto and Daniel Cárcamo, in accordance with considering paragraphs 36 to 41 of th[e] Order. [...].
5. To reject the requests for a hearing and for the creation of an executive working group, in accordance with considering paragraphs 46 to 48 of th[e] Order.
6. To reiterate to the Argentine Republic that, in coordination with the representatives and the beneficiaries of the measures, it should evaluate the appropriate mechanisms for the effective protection of the rights to life and to integrity of the beneficiaries, in accordance with considering paragraphs 34 and 35 of th[e] Order.
7. To require the Argentine Republic, by March 2, 2012, at the latest, to submit to the Inter-American Court of Human Rights a detailed report on the situation of risk of each of the beneficiaries of these provisional measures, as well as the specific measures taken to implement them, in accordance with considering paragraphs 13 to 28, 34 and 35 of th[e] Order. In this report, the State must provide information on the possible situation of risk of Luis Alberto Bolívar, in accordance with considering paragraphs 42 to 45 of th[e] Order. Subsequently, the State must inform the Inter-American Court of Human Rights about the implementation of these measures every three months.

* For reasons beyond his control, Judge Alberto Pérez Pérez did not take part in the deliberation and signature of this Order.

8. To require the representatives of the beneficiaries of the provisional measures and the Inter-American Commission on Human Rights to present their observations on the reports indicated in the preceding operative paragraph within four and six weeks, respectively, of their notification.

9. To require the representatives of the beneficiaries of the provisional measures to present a detailed report to the Inter-American Court of Human Rights on the situation of risk of each of the beneficiaries of these provisional measures and with regard to the possible situation of risk of Luis Alberto Bolívar, by March 2, 2012, at the latest, in accordance with considering paragraphs 13 to 28, 34, 35 and 42 to 45 of th[e] Order.

2. The briefs of March 2 and April 27, 2012, in which the representatives of the beneficiaries (hereinafter "the representatives") and the Argentine Republic (hereinafter "the State" or "Argentina") presented, respectively, the reports required in the seventh and ninth operative paragraphs of the Court's Order of November 25, 2011 (*supra* having seen paragraph 1). In their brief of March 2, 2012, the representatives asked the Court, *inter alia*, "to maintain [these] provisional measures" in favor of the beneficiaries and to expand them to Iván Eladio Torres Millacura, Mia Iriel Torres and Zoe Cristal Torres.

3. The briefs of May 18 and July 2, 2012, in which the representatives and the State presented, respectively, their observations on the above-mentioned reports (*supra* having seen paragraphs 1 and 2). In their brief of May 18, 2012, the representatives reiterated the requests made in their brief of March 2, 2012 (*supra* having seen paragraph 2). In addition, the brief of May 31, 2012, in which the Inter-American Commission on Human Rights (hereinafter "the Commission") presented its observations on the State's report of July 2, 2012.

4. The brief of October 3, 2012, in which the representatives reiterated the requests made in their briefs of March 2 and May 18, 2012 (*supra* having seen paragraphs 2 and 3), and requested the expansion of the provisional measures to Guillermo Flores and Verónica Heredia. Also, the brief of October 6, 2012, in which the representatives submitted additional information with regard to Mr. Flores.

5. The briefs of October 17 and 25, 2012, in which the Commission and the State, respectively, submitted their observations on the request to expand the provisional measures to Guillermo Flores and Verónica Heredia (*supra* having seen paragraph 4). In the said brief of October 25, 2012, the State also provided information on the implementation of these provisional measures.

6. The Order of the Inter-American Court of November 21, 2012, in which the Court rejected the request to expand the provisions measures to Iván Eladio Torres Millacura, Mia Iriel Torres, Zoe Cristal Torres and Verónica Heredia (*supra* having seen paragraphs 2 and 4). In the second operative paragraph of this order, the Court required the Argentine Republic and the representatives to provide the Court with a detailed report on the possible situation of risk of Guillermo Flores by February 4, 2013, at the latest.

7. The brief of December 4, 2012, in which the representatives of the beneficiaries forwarded information on presumed "incidents that had occurred with regard to Guillermo Flores after the request" to expand the provisional measures (*supra* having seen paragraph 4). In this brief, the representatives also requested the expansion of these measures to Alba Rosana Vera González, who lives with Mr. Flores.

8. The briefs of December 28, 2012, and January 8, 2013, in which the Inter-American Commission and the State, respectively, presented their observations on the information forwarded by the representatives in the brief of December 4, 2012 (*supra* having seen paragraph

7). In the brief of January 8, 2013, the State advised, *inter alia*, that Guillermo Flores had “state[d] expressly that he did not wish to be the object of any measure of protection because he considered that there was no risk to either himself or his family group.”

9. The note of the Secretariat of the Court of January 11, 2013, in which, in response to the information provided by the State in its brief of January 8, 2013 (*supra* having seen paragraph 8), the Inter-American Commission and the representatives were granted a specific time frame for presenting any observations they deemed pertinent on this brief.

10. The briefs of January 17 and 23, 2013, in which representatives and the Commission, respectively, presented their observations on the State’s brief of January 8, 2013 (*supra* having seen paragraph 8).

CONSIDERING THAT:

1. The Argentine Republic has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since September 5, 1984, and pursuant to Article 62 thereof, it accepted the obligatory jurisdiction of the Court in the same instrument of ratification.

2. Article 63(2) of the American Convention establishes that “[i]n cases of extreme gravity and urgency, and when necessary to prevent 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 (hereinafter “the Rules of Procedure”)¹ and is compulsory for States, because a basic principle of the law on State responsibility, supported by international case law, indicates that States must comply with their treaty-based obligations in good faith (*pacta sunt servanda*).²

3. Under international human rights law, provisional measures are not only preventive in that they preserve a legal situation, but they are also fundamentally protective because they protect human rights inasmuch as they seek to avoid irreparable damage to persons.³ Thus, Article 63(2) of the Convention requires that, three conditions must concur for the Court to order provisional measures: (a) “extreme gravity”; (b) “urgency”, and (c) that they seek “to avoid irreparable damage to persons.” Thus, provisional measures become a real legal guarantee of a preventive nature.⁴ These three conditions must be present in any situation in which the Court is asked to

¹ Rules of Procedure approved by the Court at its eighty-fifth regular session, held from November 16 to 28, 2009.

² 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 José Luís Galdámez Álvarez et al. Provisional measures with regard to Honduras*. Order of the Inter-American Court of Human Rights of October 24, 2012, second considering paragraph.

³ 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 José Luís Galdámez Álvarez et al. Provisional measures with regard to Honduras*. Order of the Inter-American Court of Human Rights of October 24, 2012, third 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 *Case of De la Cruz Flores. Provisional measures with regard to Peru*. Order of the Inter-American Court of Human Rights of October 25, 2012, fifth considering paragraph.

intervene and must persist for the Court to maintain the order of protection and, if one of them is no longer valid, the Court must assess the pertinence of continuing the protection ordered.⁵

4. Based on its competence, the Court must consider only those arguments that are directly and strictly related to the extreme gravity, urgency and need to avoid irreparable damage to persons. Thus, in order to decide whether to maintain the provisional measures in force, the Court must analyze whether the situation of extreme gravity and urgency persists that determined their adoption, or whether new circumstances that are equally grave and urgent justify maintaining them.⁶

5. In the Order of February 6, 2008 (*supra* having seen paragraph 1), the Court declared that, in these proceedings on provisional measures, it would not consider the effectiveness of the investigations into the events that gave rise to them, because this analysis corresponded to the examination of the merits of the matter that was being processed before the Inter-American Commission at the time.⁷ On April 18, 2010, the Commission submitted an application against the State in relation to the case of *Torres Millacura et al. v. Argentina*⁸ under Articles 51 and 61 of the Convention, and the Court delivered a judgment in this case on August 26, 2011. In this regard, in their briefs (*supra* having seen paragraphs 2 to 4 and 10), the parties provided information on the investigations that were being conducted into the enforced disappearance of Iván Eladio Torres Millacura. Based on the foregoing, the Court reiterates that, in this Order it will not rule on the investigations into the events that gave rise to these provisional measures.

A. Adoption of the necessary measures to protect the life and personal integrity of the beneficiaries (third operative paragraph of the Order of November 25, 2011) and request to maintain these provisional measures

6. In the Order of November 25, 2011 (*supra* having seen paragraph 1), the Inter-American Court found it pertinent that the provisional measures ordered in favor of María Leontina Millacura Llaipén, her children, Marcos and Valeria Torres, her granddaughters, Ivana Torres, Romina Torres and Evelyn Paola Caba, and of Miguel Ángel Sánchez and Tamara Bolívar, should remain in force for eight months, which expired on July 25, 2012. Also, in order to assess the maintenance of the provisional measures, the Court considered it necessary that both the representatives and the State forward precise and detailed reports on specific incidents and the dates on which they occurred, if appropriate, the possible current situation of risk of each of the beneficiaries indicated, as well as the specific measures taken to implement these measures. In addition, the Court asked the representatives and the State to provide grounds for maintaining

⁵ Cf. *Case of Carpio Nicolle. 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 José Luís Galdámez Álvarez et al. Provisional measures with regard to Honduras*. Order of the Inter-American Court of Human Rights of October 24, 2012, third considering paragraph.

⁶ Cf. *Matter of James et al. Provisional measures with regard to Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of August 29, 1998, sixth considering paragraph, and *Case 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.

⁷ Cf. *Matter of Millacura Llaipén et al. Provisional measures with regard to Argentina*. Order of the Inter-American Court of Human Rights of February 6, 2008, fourth operative paragraph.

⁸ Cf. *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 1.

or, if appropriate, lifting the measures in their favor, bearing in mind the reasons why the said measures had been adopted.⁹

7. In the briefs of March 2, May 18 and October 3, 2012, the representatives asked the Court to maintain these provisional measures in favor of the beneficiaries and to order the State to implement “the necessary and effective measures to avoid loss of life and harm to their physical, mental and moral integrity.” In addition, in a brief of May 31, 2012, the Inter-American Commission “note[d] with concern that incidents continue to occur that could endanger the life and integrity of the beneficiaries, and for this reason, it ask[ed] the Court to maintain the provisional measures in [their] favor.”

8. In order to maintain the provisional measures, the previously verified situation of extreme gravity and urgency, and the need to avoid irreparable damage must subsist and, furthermore, that this situation is directly related to the facts that justified the granting of the provisional measures in this case. Thus, in view of the Court’s requirements for assessing whether to maintain these measures, the relevant information must be duly authenticated and founded.¹⁰ The Court has also indicated that provisional measures are exceptional in nature; moreover they are related to a specific temporal situation and, owing to their nature, cannot be maintained indefinitely.¹¹ Evidently, the fact that no new threats have occurred could be due precisely to the effectiveness of the protection provided or to the dissuasion resulting from the measures ordered by the Court. 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, can lead to the lifting of the provisional measures.¹²

9. Thus, in order to assess the implementation of the measures and to determine the need to maintain them or, if appropriate, lift them, the Court will examine the information presented by the representatives and the State on the current situation of the beneficiaries, as well as their observations and those of the Commission in this regard.

A.1. Situation of María Leontina Millacura Llaipén and her family

10. With regard to the beneficiaries María Leontina Millacura Llaipén, her children Marcos and Valeria Torres, and her granddaughters Ivana and Romina Torres and Evelyn Paola Caba, the Inter-American Court established in the Order of November 25, 2011, that the information provided by the parties at that time was insufficient to assess whether risk to the personal integrity and life of Mrs. Millacura Llaipén and her family that justified these provisional measures, and that arose from her connection to the investigation that was being conducted into

⁹ Cf. *Matter of Millacura Llaipén et al. Provisional measures with regard to Argentina*. Order of the Inter-American Court of Human Rights of November 25, 2011, eighth, twenty-third, twenty-fourth and twenty-eighth considering paragraphs.

¹⁰ Cf. *Case of the Constitutional Court. Provisional measures with regard to Peru*. Order of the Inter-American Court of Human Rights of March 14, 2001, fourth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin. Provisional measures with regard to the Dominican Republic*. Order of the Inter-American Court of Human Rights of February 29, 2012, seventh considering paragraph.

¹¹ Cf. *Matter of Clemente Teherán et al. (Zenú Indigenous Community). Provisional measures with regard to Colombia*. Order of the Inter-American Court of Human Rights of December 1, 2003, third considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin. Provisional measures with regard to the Dominican Republic*. Order of the Inter-American Court of Human Rights of February 29, 2012, forty-eighth considering paragraph.

¹² Cf. *Case of the Constitutional Court. Provisional measures with regard to Peru*. Order of the Inter-American Court of Human Rights of March 14, 2001, fourth considering paragraph, and *Matter of Haitians and Dominicans of Haitian Origin. Provisional measures with regard to the Dominican Republic*. Order of the Inter-American Court of Human Rights of February 29, 2012, forty-eighth considering paragraph.

the enforced disappearance of Iván Eladio Torres Millacura,¹³ still met all the requirements of extreme gravity and urgency to avoid irreparable damage. This was because, according to the representatives, the last threat with these characteristics occurred to María Leontina Millacura Llaipén in 2009.

11. Thus, despite the Court's requests (*supra* having seen paragraph 1 and considering paragraph 6), the representatives failed to provide information on specific recent incidents that prove that María Leontina Millacura Llaipén, her son Marcos Torres, and her granddaughters Ivana and Romina Torres, are in a situation of extreme gravity and urgency and at risk of suffering irreparable damage to their life and personal integrity. Also, regarding Valeria Torres and her daughter, Evelyn Paola Caba, the representatives have not alleged the existence of recent threats related to the facts that motivated the adoption of these measures; in other words, as a result of the investigation into the enforced disappearance of Iván Eladio Torres Millacura.¹⁴ Accordingly, the Court observes that the only threatening facts against them mentioned by the representatives relate to a robbery at their home on September 9, 2011, and the disappearance some days before this of three dogs that guarded the house. The information provided does not reveal that these facts, which happened about eighteen months ago, bear any relationship to the said investigation. For its part, the State merely indicated that the homes of the said persons are guarded 24 hours a day, and that it has requested information from domestic entities regarding the possibility of the beneficiaries who are minors being escorted to school. The Commission made no specific reference to the situation of these persons.

12. Given that the eight-month period established in the Order of November 25, 2011, for the validity of these provisional measures has expired (*supra* considering paragraph 6), and in view of the lack of elements proving the subsistence of a situation of extreme gravity and urgency and risk of irreparable damage to life and personal integrity, the Court finds it in order to lift the measures ordered in favor of María Leontina Millacura Llaipén, Marcos Torres, Valeria Torres, Ivana Torres, Romina Torres and Evelyn Paola Caba.

A.2. Situation of Miguel Ángel Sánchez and Tamara Bolívar

13. The representatives indicated in a brief of March 2, 2012, that the measures of protection implemented in favor of Miguel Ángel Sánchez had not been effective. According to the representatives, Mr. Sánchez "receives [threats] by telephone [both] at his domicile and [on] his mobile device." Thus, they indicated that, "approximately two months after personnel from the Naval Coastguard had been stationed at his domicile, he received a telephone call [in which a] man [who] introduced himself as 'a Comodoro police agent' [... told him] that 'he had to go' to [that city] 'because he had to pay for a lawsuit [and because] he had a matter pending with the Chubut Police.'" According to the representatives, "approximately every 15 days, [Miguel Ángel Sánchez] receives telephone calls where no one speaks." Furthermore, with regard to Tamara Bolívar, the representatives indicated that this beneficiary "continues to be arrested illegally, without these detentions being registered, [...] beaten [and] harassed. When she is detained by members [...] of the Police Force of the province of Chubut, they tell her that 'they are going to kill her and they are going to make her disappear.'" According to the representatives, "Tamara suffers from extreme depression and they have serious fears for her life."

¹³ Cf. *Matter of Millacura Llaipén et al. Provisional measures with regard to Argentina*. Order of the Inter-American Court of Human Rights of July 6, 2006, eighth considering paragraph

¹⁴ Cf. *Matter of Millacura Llaipén et al. Provisional measures with regard to Argentina*. Order of the Inter-American Court of Human Rights of July 6, 2006, eighth considering paragraph.

14. Regarding Miguel Ángel Sánchez, the State advised that the Naval Coastguard of Río Grande had guarded his domicile since July 2011. In addition, in a brief of July 2, 2012 (*supra* having seen paragraph 3), it indicated that “[t]he protection [of the other beneficiaries] is carried out by an agent stationed throughout the 24 hours, and in the case of Mr. Sánchez, this is reinforced with an extra man during the night shift [...]”. The State also indicated that, at that time, “there was no proof that [Miguel Ángel Sánchez had] suffered any type of threat and/or harassment.” With regard to the situation of Tamara Bolívar, in a brief of October 25, 2012, the State indicated that “[s]he has no fixed domicile, and it was unaware of whether she was in the city.”

15. Regarding Miguel Ángel Sánchez, in a brief of May 31, 2012, the Inter-American Commission “note[d] with concern that the State merely indicated that it maintains the protection plan assigned to the other beneficiaries, even though they have stated that it is insufficient [...]”. The Commission made no specific reference to the situation of Tamara Bolívar.

16. The Court observes that, since March 2, 2012, the representatives have not referred to the presumed threatening telephone calls to the domicile and mobile telephone of Miguel Ángel Sánchez, which had started in September 2011, or to any other incident that would allow the Court to consider that Mr. Sánchez is still in a situation of extreme gravity and urgency. Furthermore, the representatives have not provided specific information, as regards the timing, means and place, of the supposed illegal arrests suffered by Tamara Bolívar that would allow the Court to determine, *prima facie*, whether the situation she faced of extreme gravity and urgency and of risk of suffering irreparable damage subsists to date.

17. Given that the eight-month period established in the Order of November 25, 2011, for the validity of these provisional measures has expired (*supra* considering paragraph 6), and in view of the absence of elements that prove the subsistence of a situation of extreme gravity and urgency, and of risk of suffering irreparable damage in keeping with Article 63(2) of the American Convention, the Court considers that it is in order to lift the provisional measures ordered in favor of Miguel Ángel Sánchez and Tamara Bolívar.

A.3. Guarantee obligations of the Argentine State

18. The decisions taken in sections A.1 and A.2 of this Order do not preclude that, if in the future, the three requirements established in Article 63(2) of the American Convention concur once more, the Court may order the adoption of new provisional measures. Moreover, it should be repeated that Article 1(1) of the Convention establishes the general obligations of the States Parties to respect the rights and freedoms recognized in the Convention and to ensure the free and full exercise of these rights and freedoms to all persons subject to their jurisdiction, under any circumstance. Therefore, despite the lifting of the provisional measures ordered above, the State is obliged to guarantee the rights of the persons mentioned in the said sections using the relevant domestic mechanisms.¹⁵

19. In addition, the Court observes that, in the Judgment delivered on August 26, 2011, in the Case of *Torres Millacura et al. v. Argentina*, which is related to this matter, the State was ordered to ensure that those who took part in the investigation of the events of which Iván Eladio Torres Millacura was a victim, including the next of kin of the victims and witnesses, have appropriate guarantees for their safety.¹⁶ This case is at the stage of monitoring compliance and, recently,

¹⁵ Cf. *Case of Gutiérrez Soler v. Colombia. Provisional measures with regard to Colombia*. Order of the Inter-American Court of Human Rights of October 23, 2012, twenty-first considering paragraph.

¹⁶ Cf. *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 164(b).

the State presented its first report on compliance.¹⁷ Consequently, the Court considers that, in accordance with the provisions of Articles 67 and 68(1) de the American Convention, and Article 69 of the Court's Rules of Procedure, as part of the State's obligation to inform the Court on the measures adopted to comply with the said Judgment,¹⁸ Argentina must forward, in its report on compliance, precise and detailed information on the safety measures that are eventually adopted in favor of the said persons, including María Leontina Millacura Llaipén, Marcos Torres, Valeria Torres, Ivana Torres, Romina Torres, Evelyn Paola Caba, Miguel Ángel Sánchez and Tamara Bolívar.

B. Request to expand these provisional measures to Luis Alberto Bolívar

20. In the Order of November 25, 2011 (*supra* having seen paragraph 1), in response to a request for provisional measures filed by the representatives in favor of Luis Alberto Bolívar, presumed witness in the case of the enforced disappearance of Iván Eladio Torres, the Inter-American Court indicated that, although the incidents that they had described were extremely grave, because, presumably, in November 2011, members of the First Police Precinct had beaten Mr. Bolívar and electrocuted him with "a cattle prod," the Court did not have evidence to verify whether his situation was urgent, because it had not received any information on recent threats or danger to him. Consequently, the Court requests that the parties provide information on the possible situation of risk of Mr. Bolívar.¹⁹

21. In its brief of April 27, 2012, the State advised that "the national Human Rights Secretariat had indicated that [Mr. Bolívar] had not filed any complaint in the domestic sphere with regard to the supposed ill-treatment that he had suffered from police personnel in November 2010." The representatives and the Commission did not provide information on Mr. Bolívar's situation.

22. Thus, given the lack of elements that, *prima facie*, establish the requirements of extreme gravity and urgency to avoid irreparable damage to Luis Alberto Bolívar, the Court rejects the request filed to expand these provisional measures to include him.

C. Request to expand these provisional measures to Guillermo Flores and Alba Rosana Vera González

23. In the Order of the Court of November 21, 2012 (*supra* having seen paragraph 6), in response to a request filed by the representatives to expand the provisional measures to Guillermo Flores, who presumably has information on what happened to Iván Eladio Torres, the Court considered that the representatives had not provided sufficient elements to verify whether the situation of Mr. Flores was of extreme gravity and urgency, and if his rights to personal integrity and life could be affected irreparably. Therefore the Court considered it pertinent to ask the representatives and the State to provide information on the actual situation of Mr. Flores,

¹⁷ Cf. Brief of October 10, 2012, presented by the State in the context of monitoring compliance with the Judgment in the Case of *Torres Millacura et al. v. Argentina* (merits file, tome II, folios 808 to 1398).

¹⁸ Cf. *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, seventh considering paragraph, and *Case of Mejía Idrovo Vs. Ecuador. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 4, 2012, third considering paragraph.

¹⁹ Cf. *Matter of Millacura Llaipén et al. Provisional measures with regard to Argentina*. Order of the Inter-American Court of Human Rights of November 25, 2011, forty-fourth considering paragraph.

referring, if applicable, to specific incidents that would allow the Court to verify whether the necessary requirements are met to order the expansion of these measures to him.²⁰

24. On December 4, 2012, the representatives submitted to the Court information on "incidents that had occurred to Guillermo Flores after having" requested the expansion of these provisional measures to him. The representatives indicated that, on November 3, 2012, "Guillermo Flores' home was shot at from a grey Renault Logan vehicle, with polarized windows, with four people in it."²¹ In addition, they alleged that, on November 8, 2012, two agents of the Argentine Federal Police came to his home and took him, as "if were arrested," to the Federal Court of Comodoro Rivadavia, where he was questioned²² about the case of the enforced disappearance of Iván Eladio Torres, among other matters. According to the representatives, he was "reproached" for "having lodged a complaint before the Inter-American Court [...]," and the judge who questioned him forbade him to speak to third parties about his statement, telling him that "he could not interfere any further." She also informed him that "police agents would be posted to his home 'to protect him'" until November 13, 2012, the date of which he should provide the information that she had requested. As the judge had indicated, presumably, that same day, "a grey Ranger truck, with four people inside, parked, and they prevented Mr. Flores from leaving his home without [... previously informing them] where and why he was going out and who he would be meeting." Later, an individual who Mr. Flores identified as a police agent from the First Police Precinct of Comodoro Rivadavia arrived in a "Renault 12" together with another man and "reprimanded the individuals who were in the Ranger."

25. Furthermore, in the said brief, the representatives also indicated that, on November 18, 2012, "shortly before 2 a.m., two unknown persons entered Mr. Flores' domicile," who "when they saw him jumped over the wall of the house." Mr. Flores telephoned a Federal Police official who told him that he would send a patrol car to his home and, subsequently, two police agents of the province of Chubut arrived. They presumably told Mr. Flores that they "kn[ew] what [was] happening," without providing him with any explanation. In view of this situation, Mr. Flores again telephoned the Federal Police official who had attended him previously, and "reproached him for having called on members of the police of the province of Chubut"; however, the official responded that "he had not called them [and that ...] he had only send '[his] men.'" Based on the foregoing, the representatives reiterated the request to expand these provisional measures to Guillermo Flores, and also asked that the measures be expanded to Alba Rosana Vera González, who lives with him.

26. Subsequently, in response to the State's observations (*infra* considering paragraph 27), in a brief of January 17, 2013, the representatives "denied categorically that the judge had adopted any measure to protect the rights [... of] Mr. Flores." According to them, "[t]he personnel who were posted for one day in front of his home were there so that Mr. Flores would give them information on the individuals who he had indicated were involved in the disappearance of Iván

²⁰ Cf. *Matter of Millacura Llaipén et al. Provisional measures with regard to Argentina*. Order of the Inter-American Court of Human Rights of November 21, 2012, nineteenth considering paragraph.

²¹ According to the representatives, Mr. Flores called the Police of Rada Tilly, but "no one responded to him," so he then called "the telephone of Rada Tilly Urban Security." [T]wo people in a mobile unit arrived, and Mr. Flores informed them of what had happened [...]. The Urban Security personnel advised him that the said vehicle was not from Rada Tilly and that it would be identified when it left the town. To date, Mr. Flores has not been informed about this episode by either the latter or any other authority."

²² The representatives indicated that Mr. Flores was questioned by the "Sub-Secretariat of Human Rights, [... by the] defense lawyers of some of the police agents involved in lawsuit 7020 Millacura Llaipén María Leontina ref/Enforced disappearance of a person, [and also by the judge who was hearing this case and by the] Secretary [of the said court]." Apparently, Mr. Flores did not have his lawyer, even though he had asked to be allowed to call him.

Eladio Torres. [They] also categorically den[ied] that Mr. Flores had said that he considered that there was no risk to his life [and] that of his family group.”

27. The State indicated that, “according to the information provided by the Federal Court of Comodoro Rivadavia, [on] November 2012, Guillermo Flores’ deposition was taken in the context of criminal proceedings No. 7020, at which time [he] stated that he had been threatened and assaulted by unknown individuals in public and at his home. [... Therefore,] the intervening judge ordered the implementation of personal and house protection in favor of [Mr.] Flores. However, on November 9, this protection was annulled at the request of [the latter, who] expressly stated that he did not wish to be the object of any measure of protection because he considered that there was no risk to either him or his family group. Despite this, the Court advised him that it had a permanent guard, 24 hours a day, and informed him of the telephone numbers of the Federal Court and those of the acting protection agency, the local delegation of the Argentine Federal Police.”

28. In a brief of December 28, 2012, the Commission recorded that the information forwarded by the representatives prior to the issue of the Court’s Order of December 21, 2012, indicated that, on several occasions, Mr. Flores had been “harassed, followed and ‘provoked’ in public by individuals who he identified as those responsible for what happened to Iván Torres.” Thus, it considered that “the additional information presented by the representatives provides further elements of extreme gravity and urgency, especially taking into account the context of the case in which other persons who say they have relevant information have indicated that they have received threats from the Chubut police.” Subsequently, in its brief of January 23, 2013, and based on the State’s assertions (*supra* considering paragraph 27), the Commission stressed that “there is disagreement [...] between the parties” about the protection measures that the State has allegedly attempted to grant to Mr. Flores. Owing to “the lack of documentary support concerning the measures of protection that have allegedly been offered, as well as the presumed rejection of these by Mr. Flores, the Commission reiterate[d] that the situation of this persons requires special monitoring” by the Court.

29. The Court considers that the information presented reveals, *prima facie*, that Guillermo Flores has been subjected to recent threats to his personal integrity and life at his home, and also has apparently been harassed by State authorities, presumably owing to the information that he could provide in relation to the enforced disappearance of Iván Eladio Torres and the case of *Millacura Llaipén et al. v. Argentina*. In addition, irrespective of whether Mr. Flores rejected the State’s protection at a certain moment, the Court observes that he signed the request for expansion of provisional measures that the representatives submitted to the Court and that, currently, he does not have protection. Hence, the Court considers that the incidents described by the representatives reveal a situation of extreme gravity and urgency that justify the expansion of measures of protection in order to avoid irreparable damage to him. Consequently, the State must adopt all necessary measures to protect the life and personal integrity of Guillermo Flores and of Alba Rosana Vera González, who lives with him and whose rights could also be affected by the threats to their home. The Court recalls that these measures of protection must be planned with the participation of the beneficiary or his representatives and, also, they must be implemented as soon as possible, so that prompt collaboration between the representatives and of the State in this regard is particularly important (*infra* considering paragraphs 31 and 32).

30. Despite the above, in order to ensure the adequate supervision of these provisional measures, the Court requests the representatives and the State to present detailed updated information on the situation of risk of Guillermo Flores, describing specific facts, if pertinent, as well as the actions taken to implement the measures ordered in his favor, and providing grounds for the need to maintain or, if appropriate, lift them.

D. Obligation to evaluate the mechanisms of protection in coordination with the beneficiaries and their representatives (sixth operative paragraph of the Orders of February 6, 2008, and November 25, 2011)

31. In Orders of February 6, 2008, and November 25, 2011, the State was required, "in coordination with the representatives, to evaluate the appropriate mechanisms for the effective protection of the rights to life and integrity of the beneficiaries [...]."²³ Despite the lifting of the provisional measures required in this Order (*supra* considering paragraphs 12 and 17), the Court considers it pertinent to emphasize that neither the parties nor the Inter-American Commission referred to this point in their briefs.

32. Given that, in this matter, measures of protection are ordered for Guillermo Flores and Alba Rosana Vera González, the State must take all pertinent measures to ensure that the measures of protection are planned and implemented with the participation of the beneficiaries of the measures or their representatives, so that the said measures are provided diligently and effectively, and must keep them informed about any progress in their execution.²⁴ Hence, the Court reiterates that this coordination is essential for the effective implementation of these measures. Accordingly, the parties and the Inter-American Commission, above all the representatives and the State, must provide the Court with prompt and detailed information on this point. In addition, they must forward the Court evidence that allows it to verify whether they have coordinated, for example by possible meetings between the representatives and the State or in any other way that the two parties consider pertinent, to ensure that the State can comply with this requirement.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To lift the provisional measures in favor of María Leontina Millacura Llaipén, Marcos Torres, Valeria Torres, Ivana Torres, Romina Torres, Evelyn Paola Caba, Miguel Ángel Sánchez and Tamara Bolívar, in accordance with considering paragraphs 6 to 19 of this Order.
2. To reject the request to expand these provisional measures to Luis Alberto Bolívar, in accordance with considering paragraphs 20 to 22 of this Order.
3. That the Argentine Republic must adopt all necessary measures to protect the right to life and personal integrity of Guillermo Flores and Alba Rosana Vera González, in accordance with considering paragraphs 23 to 30 of this Order.

²³ Cf. *Matter of Millacura Llaipén et al. Provisional measures with regard to Argentina*. Order of the Inter-American Court of Human Rights of November 25, 2011, thirty-fifth considering paragraph.

²⁴ Cf. *Matter of Alvarado Reyes. Provisional measures with regard to Mexico*. Order of the Inter-American Court of Human Rights of November 23, de 2012, third operative paragraph, and *Case of Fernández Ortega et al. Provisional measures with regard to Mexico*. Order of the Inter-American Court of Human Rights of February 20, 2012, third operative paragraph.

4. That the Argentine Republic must take all pertinent measures to ensure that the measures of protection required in this Order are planned and implemented with the participation of the beneficiaries of the measures or their representatives, so that the measures are provided diligently and effectively and they are kept informed of any progress in the execution of the measures, in accordance with considering paragraphs 31 and 32 of this Order.

5. That the Argentine Republic must present to the Inter-American Court of Human Rights, by March 18, 2013, at the latest, a detailed report on the situation of risk of Guillermo Flores and Alba Rosana Vera González, as well as on the specific measures taken to plan, coordinate and implement these provisional measures, in accordance with considering paragraphs 30 to 32 of this Order. Subsequently, the State must continue providing the Inter-American Court of Human Rights with information on the implementation of these provisional measures every three months.

6. That the representatives of the beneficiaries of the provisional measures and the Inter-American Commission on Human Rights must present their observations on the reports referred to in the preceding operative paragraph within four and six weeks, respectively, of the notification of these reports.

7. That the representatives of the beneficiaries of the provisional measures must submit to the Inter-American Court of Human Rights, by March 18, 2013, at the latest, a detailed report on the situation of risk of Guillermo Flores and Alba Rosana Vera González, as well as on the specific measures taken to plan, coordinate and implement these measures, in accordance with considering paragraphs 30 to 32 of this Order.

8. That the name of this matter shall be changed, to be known hereafter as "Matter of Flores *et al.* in relation to the *Case of Torres Millacura et al. v. Argentina.*"

9. That the Secretariat of the Inter-American Court of Human Rights shall notify this Order to the Argentine Republic, the Inter-American Commission on Human Rights and the beneficiaries of the provisional measures or their representatives

Judge Eduardo Vio Grossi advised the Court of his Individual Opinion which accompanies this Order.

Diego García-Sayán
President

Manuel Ventura Robles

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

INDIVIDUAL OPINION OF JUDGE EDUARDO VIO GROSSI
ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
FEBRUARY 13, 2013
PROVISIONAL MEASURES WITH REGARD TO THE ARGENTINE REPUBLIC
MATTER OF MILLACURA LLAIPÉN *ET AL.*

I am issuing this individual opinion in order to place on record that, for the undersigned, these provisional measures are ordered considering that they refer to a situation other than the *Case of Torres Millacura et al. v. Argentina*, for which reason the corresponding case file has been identified as "*Matter of Flores et al. in relation to the case of Torres Millacura et al. v. Argentina.*" For the same reason, what I indicated in the *Dissenting Opinion concerning the Order of the Inter-American Court of Human Rights of November 25, 2011, on Provisional Measures, Matter of Millacura Llaipén et al. with regard to the Argentine Republic* is applicable to this matter.

Eduardo Vio Grossi