

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 19, 2013**

PROVISIONAL MEASURES WITH REGARD TO EL SALVADOR

MATTER OF B.¹

HAVING SEEN:

1. The Order issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on May 29, 2013, in which the Court decided, *inter alia*:

To require the State of El Salvador to adopt and guarantee, urgently, all necessary and effective measures to enable the group of physicians who are treating Ms. B. to adopt, without any interference, the medical actions they consider opportune and appropriate to ensure the due protection of the rights established in Article 4 and 5 of the American Convention and, in this way, avoid damage that could become irreparable to the rights to life and personal integrity and health of Ms. B.

2. The brief of June 20, 2013, in which the State of El Salvador (hereinafter "El Salvador" or "the State") presented its report on the implementation of the provisional measures and requested that they be lifted.

3. The briefs of June 25 and July 2 and 9, 2013, in which the representatives of the beneficiary² (hereinafter "the representatives") presented their observations on the State's report and on the implementation of these measures.

4. The briefs of May 29 and July 16, 2013, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") referred to the State's report and to the implementation of the provisional measures.

5. The note of the Secretariat of the Inter-American Court of July 18, 2013, in which, on the instructions of the President of the Court, the State was granted until July 29, 2013, to submit any observations it deemed pertinent on the communications of the Inter-American Commission and of the representatives of the beneficiary. In a note of the Secretariat of August 5, 2013, the State was reminded that it should forward the said observations and granted a new time frame until August 8, 2013.

¹ At the request of the Inter-American Commission, the identity of the person in favor of whom the provisional measures were requested is maintained confidential, and she is identified with the letter "B."

² The representatives of Ms. B. are the *Colectiva Feminista para el Desarrollo Local de El Salvador*, the *Agrupación Ciudadana por la despenalización del aborto terapéutico, ético and eugenésico de El Salvador*, and the Center for Justice and International Law (CEJIL).

6. The brief of August 14, 2013, in which the State presented its observations on the communications of the Commission and of the representatives.

CONSIDERING THAT:

1. El Salvador has been a State Party to the American Convention since June 23, 1978, and accepted the contentious jurisdiction of the Court on June 6, 1995.

2. Article 63(2) of the American Convention stipulates that “[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”

3. These measures are regulated in Article 27 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”).³

4. Based on its competence, in the context of provisional measures the Court may consider only and strictly those arguments that are directly related to the extreme gravity, urgency and need to avoid irreparable damage to persons. Any other fact or argument can only be decided during consideration of the merits of a contentious case.⁴

5. The Court observes that the State presented information on the decision taken by the Constitutional Chamber of the Supreme Court of Justice on May 29, 2013, declaring “inadmissible the petition filed,” and “inadmissible the constitutional protection (*amparo*) sought” by Ms. B “for the supposed violation of her fundamental rights to health and to life.” In this regard, the Court emphasizes that this judicial decision was described and taken into account in the Order adopted on May 29, 2013; accordingly, it is not necessary to refer to it again.

6. Regarding the facts that occurred in relation to Ms. B. after the provisional measures had been adopted in her favor, in essence the State has provided the following information:

a) On “June 3 [2013], Ms. B. was 26 weeks pregnant” and that day she underwent an “ultrasound”;

b) “The head of the perinatology service indicate[d that] a caesarean section [would] be performed because she was in labor with a previous history of a caesarean section and a short period between pregnancies and amniotic fluid. The requirements for detaining the uterine activity with medication were not met because this was contraindicated in the case of fetuses with fetal abnormalities incompatible with life”;

c) The caesarean section was performed during the afternoon of June 3, 2013. The State advised that “a female infant was extracted [...] with total absence of braincase and brain tissue.” The State also indicated that “the neonatology team attended to

³ Rules of Procedure of the Court approved at its eighty-fifth regular session held from November 16 to 28, 2009.

⁴ 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, considering paragraph 6, and *Case of the Barrios Family*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of May 30, 2013, considering paragraph 4.

the newborn and decided to take her to their unit to provide the necessary care, and she died at 7:01 p.m." that day;

d) Ms. B. was "subsequently transferred to the intensive care unit in order to monitor her condition continuously to avoid complications in her syndrome of systemic lupus erythematosus";

e) The State provided assurance that Ms. B. had "made satisfactory progress and her dyspnea had improved. Her vital signs and urinary output were normal. The laboratory tests gave normal results; [consequently,] it was decided to take her back to the perinatology service where the evaluations continued";

f) On "June 10 [2013, the] patient asked to be released from hospital in order to see her son," and this was authorized the same day;

g) On June 12, 2013, Ms. B. underwent "a cardiovascular evaluation, and was found to be haemodynamically stable" and "a postpartum evaluation was carried out in the perinatology service, finding her stable at that time[;] out-patient follow-up in four weeks' time was prescribed and recommendations in case of any complication," and

h) The State assured that "[t]o date, medical follow-up by different medical sub-specializations is being provided to control her medical condition."

7. Regarding the facts indicated above, the State argued that it "had indeed taken and implemented all the necessary measures, from the perspective of medical science, to ensure the proper protection of the rights recognized in Articles 4 and 5 of the American Convention [...] with regard to Ms. B." It added that, "although the Inter-American Court [...] had not requested it, the State of El Salvador had also adopted the maximum number of measures and actions required to preserve the life of the fetus that was in the uterus of Ms. B. so that every effort had been made to ensure this life, even though the result was unsuccessful owing to the anencephaly that it suffered from, which prevented the autonomous functioning of the central nervous system and, therefore, the impossibility of the functioning and control of the heart rate and the breathing rate, as well as of other neuronal activity." Based on the foregoing, the State asked that the Court "assess its compliance with the provisional measures required [and] issue the corresponding order, closing the preventive procedure."

8. The representatives, in their observations on the State's report, indicated that "even though the passage of time and the need to implement alternative methods of treatment did not lead to the death of the beneficiary, they did not allow it to be guaranteed at this time that irreparable damage has not been caused to the health, personal integrity – physical and mental – and even the quality of life of the beneficiary." Regarding the State's indications that it would continue providing Ms. B. with medical follow-up on the disease she suffers from, the representatives alleged that "this was partially true, because the beneficiary does not live in San Salvador, so that the costs of her transfer for each medical appointment or test are being paid for by the organizations that represent her." The representatives assured that they had "received information from the beneficiary that, a few days after the surgery, the nephrologist had allegedly told her that she was suffering from the apparent failure of both kidneys."

9. Based on the above, the representatives asked that "the Salvadoran State present detailed and updated information on the different tests and treatments that the beneficiary is undergoing as a follow up to the surgical procedure that was performed and, especially, in relation to the disease from which she suffers." In particular, they considered that "it would

be extremely important to have a recent comprehensive medical report that evaluates the beneficiary's actual state of health following the surgery, including the impact of the late-stage interruption of her pregnancy." In addition, they indicated that it was important to ask the State to provide information on "the continuation of the priority medical care that the beneficiary needs not only due to her disease, but also to monitor the negative consequences that may have been caused by the delayed response by the authorities." Lastly, they requested that the State guarantee "that the beneficiary would receive the priority medical care that she requires, based on the above-mentioned evaluation, in relation to her disease and to the negative effects that the wait for the result of the legal proceedings may have caused her."

10. For its part, the Commission indicated that "following the order for provisional measures issued by the Inter-American Court, it was possible to perform the medical procedure that eliminated one of the risk factors for the life, personal integrity, and health of [Ms.] B.; in other words, the progress of the pregnancy under the health situation of which the Court is aware." Nevertheless, the Commission stated that "bearing in mind that the Inter-American Court ordered the adoption of the necessary measures to protect the life, personal integrity, and health of Ms. B., and that the international standards with regard to maternal health include attending to the specific needs related to pregnancy, birth, and the postpartum period, the Commission noted that it did not have complete information on the follow-up of her health situation." Therefore, the Commission considered that it was relevant for the Court to "require the State to present more detailed information on this aspect, including a response to the concerns expressed by the representatives regarding the kidney failure from which the beneficiary is allegedly suffering following the caesarian section."

11. With regard to the observations in the communications presented by the Commission and the representatives, the State reiterated the information it had provided in its previous report and added that, on June 19, and on July 3 and 10, 2013, Ms. B. had attended medical control appointments in the Cardiology Unit and "in the high-risk postpartum unit." It also indicated that "she was given another monitoring appointment on August 26 in the Rheumatology Unit." Furthermore, regarding the obligation to guarantee the life and personal integrity of Ms. B., the State reiterated that this "remained in force with regard to [Ms. B.], at any stage of the evolution of her underlying disease, and any other circumstances that could eventually threaten or affect the enjoyment of these rights, as well as the right to health."

12. The Court recalls that maintaining the measures of protection requires it to make a more rigorous assessment of the persistence of the situation that gave rise to them.⁵ Consequently, the Court must analyze whether the situation of extreme gravity and urgency persists that determined the adoption of the measures, or whether new equally grave and urgent circumstances warrant maintaining them.⁶ Moreover, the Court reiterates that the State, when requesting the lifting of the provisional measures, must present sufficient evidence and arguments to allow the Court to assess that the risk or threat no longer meets the requirements of extreme gravity, and urgency to avoid irreparable damage.⁷

⁵ Cf. *Matter of the Kankuamo Indigenous People*. Provisional measures with regard to Colombia. Order of the Court of April 3, 2009, considering paragraph 7, and *Matter of Álvarez et al.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of May 22, 2013, considering paragraph 44.

⁶ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Court of August 29, 1998, considering paragraph 6, and *Case of the Barrios Family*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of May 30, 2013, considering paragraph 4.

⁷ Cf. *Case of Carpio Nicolle*. Provisional measures with regard to Guatemala. Order of the Court of July 6, 2009, considering paragraph 24, and *Matter of Álvarez et al.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of May 22, 2013, considering paragraph 44.

13. Taking into account the information set out above, the Court will now analyze the requirements established in Article 63 of the Convention; in other words, the extreme gravity, urgency and possible irreparable damage. First, the Court recalls that the adoption of urgent or provisional measures does not presuppose or entail an eventual decision on the merits of the matter if the case should be submitted to the Court's consideration, nor does it prejudge the State's responsibility for the facts denounced.⁸

14. Regarding the requirement of extreme gravity, the Court observes that the medical procedure that interrupted the pregnancy of Ms. B. was performed on June 3, 2013 (*supra* considering paragraph 6.c). In this regard, the Court finds it relevant to emphasize that it assesses positively the satisfactory and prompt efforts of the State authorities to comply with the provisional measures that were ordered in favor of Ms. B. In addition, the Court observes that, following the caesarean section, Ms. B. appears to be in a stable condition (*supra* considering paragraph 6.e). Based on the foregoing, the Court considers that the possible risks to the life and persons integrity that could have arisen from the continuation of the said pregnancy, and based on which the provisional measures in this matter were adopted, no longer subsist. The Court observes that the representatives mentioned that they had information concerning possible health problems of Ms. B. that continued following the caesarean section. Nevertheless, the representatives failed to present any medical documentation to substantiate this affirmation and merely asked that the State make an assessment to determine the current situation of the health of Ms. B. Therefore, the Court does not have sufficient information to allow it to determine that Ms. B. is currently in a situation of extreme gravity; particularly if it is considered that the factual situation that gave rise to these provisional measures no longer exists. Since one of the requirements indicated in Article 63 of the Convention is no longer met, the Court finds it necessary to lift the provisional measures adopted in her favor.

15. Despite the foregoing, the Court recalls that Article 1(1) of the Convention establishes the general obligations of States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, under any circumstances. Moreover, provisional measures are exceptional in nature and complementary to this general obligation of the States. Thus, the presumptions for the Court to lift provisional measure cannot signify that the State is relieved of its treaty-based obligations of protection. Therefore, the Court emphasizes that, irrespective of the existence of specific provisional measures, the State is obliged to ensure the rights of persons in a situation of risk.⁹

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority under Article 63(2) of the American Convention and Article 27 of its Rules of Procedure,

⁸ Cf. *Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the President of the Inter-American Court of Human Rights of July 13, 1998, considering paragraph 6, and *Matter of B.* Provisional measures with regard to El Salvador. Order of the Inter-American Court of Human Rights of May 29, 2013, considering paragraph 11.

⁹ Cf. *Case of Velásquez Rodríguez.* Provisional measures with regard to Honduras. Order of the Inter-American Court of Human Rights of January 15, 1988, considering paragraph 3, and *Matter of Álvarez et al.* Provisional measures with regard to Colombia. Order of the Inter-American Court of Human Rights of May 22, 2013, considering paragraph 104.

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights on May 29, 2013, in favor of Ms. B.
2. To require the Secretariat of the Inter-American Court to notify this Order to the State of El Salvador, the Inter-American Commission on Human Rights, and the representatives of the beneficiary.
3. To close the case file in this matter.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary