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Clara Burbano Herrera, *Provisional Measures in the Case Law of the Inter-American Court of Human Rights* (Intersentia, Antwerpen, 2010, x + 227 pp, € 49.00) ISBN 978-94-000-0037-7 (pb).

The procedures relating to, and outcomes of applications for, provisional measures of protection commonly receive significantly less academic assessment than final decisions on the merits. In the particular case of the Inter-American system of human rights, the insufficient attention paid to these measures stands in contrast with their importance. As Clara Burbano Herrera puts it, provisional measures are the 'institution whose objective is to guarantee the practical effectiveness of rights so that they are not just rhetorical' (p. 1).

Aiming at bridging the gap between importance and attention, this book dissects the relevant sections in the Rules of the Inter-American Court of Human Rights, the Rules of Procedure of the Inter-American Commission on Human Rights, the American Convention on Human Rights (ACHR) and, in particular, the jurisprudence of the Inter-American Court of Human Rights (IACtHR or 'the Court') from 1987 to 2009, that is, 374 orders on provisional measures. The publication, which is the result of comprehensive research, is structured in eight chapters, richly detailed with graphics and tables and supported by more than 800 footnotes.

The first chapter considers the issue of jurisdiction, paying regard to the particularities of the Inter-American human rights system, which entitles the Commission to request provisional measures even if the case is still under its consideration and not yet submitted to the Court. The assessment of jurisdiction *ratione materiae* shows that the Court, in almost all the cases in which it has adopted provisional measures, has supported its decision solely on the basis of the ACHR, rejecting the use of other international and domestic norms (pp. 48–9). Finally, the chapter discusses the elements for the Court's jurisdiction in relation to victims who were not within the territory of an allegedly perpetrator state fearing for their rights (*ratione loci*) and examines the

doctrinal debate as to when the jurisdiction of the Court to determine provisional measures commences and when it terminates (*ratione temporis*). The information provided by the first chapter should have been briefly compared with other international tribunals. Despite the fact that the book is focused on the Inter-American system, the adoption of external parameters could have given a clearer dimension as to how common or special is the procedure under assessment, for example whether the European Court of Human Rights supports its decisions only on the basis of the European Convention of Human Rights or whether it also relies on the domestic law of the contracting parties.

The formal and substantive conditions of admissibility for provisional measures are assessed in Chapter 2. Since there are no specific formalities, the Rules of the Court simply stating that they should be presented by any means of communication, practitioners adopt the general rules for presenting briefs. Interestingly, the Court has adopted provisional measures in 13 cases (or 19%) in which the beneficiaries were unnamed as it accepts 'the protection of groups of unnamed persons when they are potentially at risk' (p. 71). It is important to note that even in such cases the Court is aware of the approximate number of beneficiaries and they range from 501 in the *Monagas Judicial Confinement Center Case* to 6,000 in the *Indigenous Kankuamo Case* (table 18, p. 72). With regard to substantive conditions, the author pertinently assesses which rights are commonly protected by the Court. In spite of different understandings, the IACtHR does not rank rights in a hierarchy or determine a specific set of rights to be protected by provisional measures. Although in 95.8% of the cases the rights to life and personal integrity have been protected, the author concludes that 'this does not mean that the Court favours only these rights, but rather it appears to be because the protection of those rights and not others has been requested' (p. 87). This information should have been further assessed. The high number of cases based on the rights to life and personal integrity may corroborate, on the surface, Herrera's assumption, but it also demonstrates the structural limitations of the Inter-American system as a whole, which forces prioritisation amid the caseload reaching the Inter-American Commission on Human Rights. With regard to the criterion of urgency, the chapter demonstrates the importance given by the Court to provisional measures: out of 80 initial orders, 12 were issued on the same day as the petition was received and more than half of the total (44) were issued within five days (p. 96).

Chapter 3 presents an interesting dilemma faced by the Court when considering the evidence accompanying a request for provisional measures. On one hand the petitioners have to provide enough information to convince the Court that the situation is *prima facie* grave and urgent, and, on the other hand, the Court understands that this kind of evidence is extremely difficult to obtain (as it may be under control of the state) or may expose a third party to additional risk (if the evidence depends on testimony, for example). However, the numbers reveal that the Court tends not to be rigorous when assessing petitions (table 20, p. 106). As a matter of fact, half of all provisional orders issued as initial orders were based on judicial decisions of a domestic court (pp. 109–14). The other half were based on information extracted from mass media, reports of national and international bodies and personal declarations of witnesses or victims (pp. 114–21). Indirect proof was also relevant to convince the Court, particularly when it substantiated precautionary measures taken prior to the filing of the request, when it showed the direct impact of an armed conflict on the claimant's rights, or in cases in which it evidenced a generalised practice 'that results in damage to the rights

of persons and that covers the situation that is being considered by the Court' (pp. 121–6).

Chapter 4 illustrates the variety of procedures adopted by the Court following an initial request for provisional measures. The different trajectories between the filing of a petition and the decision of the Court might be a consequence of the complexity of each case, but it also reflects the differences in time it takes the Court to decide on the request and raises concerns regarding the equal treatment of parties in similar situations. Herrera groups the cases into 13 categories, which may be outlined as those where: (a) urgent measures are adopted by the President of the Court, with the state involved and the Commission presenting observations, and the plenary of the Court ratifying the order; (b) the Court decides immediately after receiving the petition; (c) urgent measures are adopted by the President of the Court, with a public hearing, and the plenary of the Court ratifying the order; (d) and the Court requests observations from the parties and the Commission, deciding only after receiving all the observations (pp. 132–137). Whereas procedure (b) takes an average of 2.9 days, procedure (d) takes an average of 17 days. Accordingly, it may be queried whether the different procedural trajectories constitute an acceptable procedural variation or whether the Court must pursue a reasonable degree of standardisation.

Chapter 5 commences by providing certain statistical information regarding the structure of decisions in terms of concurring and dissenting opinions. More importantly, it assesses the nature of the measures ordered. Leaving aside the generic measures of protection, which are those 'that do not determine the specific measure that the State must take to comply with its duty to protect' (p. 150), the Court has indicated specific measures to be taken in 37 out of 71 cases. The author categorises them according to the issues raised by the case. As to provisional measures prescribing domestic courts to take judicial action, a range of different orders are issued, such as requests to enforce arrest warrants, to investigate, to provide copies of documents, or even to suspend domestic sentences (or part of them). In another group of cases the orders are aimed at, among other things, personal protection, by means of increasing surveillance over certain illegal groups; improving public security in certain areas or for certain persons, providing documents, refraining from taking deportation action and reallocating civilian authorities so they can receive urgent communications from the beneficiaries. Measures were also commonly directed at states to 'conform prison conditions to the minimum international standards and in still others the States are requested to give adequate medical attention to inmates when their health is in danger' (p. 156).

An essential duty associated with complying with the Court's order is to inform the Court by 'the formal presentation of a document within the established period with specific, current, true and detailed information on relevant issues' (p. 159). The periodicity and time frame depend on each case, but in many situations the Court also requires states to inform it about any relevant fact that might have an influence on the case, independently of any further request. The beneficiaries and the Commission also play an important role in this regard, as they are requested to report to the Court on measures taken by states.

The measures may be broadened, lifted, reinstated or simply maintained, should the conditions of extreme gravity and urgency continue. In Chapter 6 the author describes cases in which the Court found reasons to expand the measures, which it has done in one third of all orders. If the urgency, extreme gravity and the danger of

irreparable damage cease, there is no reason to maintain the measure. Nevertheless, if after lifting the measure a supervening event provokes a situation with the same elements that previously served to authorise the provisional measures, it may be reinstated.

Chapter 7 considers the compliance of states with provisional measures orders, certainly one of the crucial issues for any tribunal. Herrera presents the data, dividing the topic in six categories: the means used to protect the beneficiaries, legal consequences of compliance, difficulties with compliance, non-compliance, non-compliance and the Organization of American States (OAS) and mechanisms of oversight and control. Some frustrating conclusions can be drawn from the cases assessed. It is shocking that in 20% (or 14 out of 71) of the cases in which provisional measures were adopted, at least one of the beneficiaries was killed while the measures were in force, totalling 102 victims in the period assessed (pp. 188–92). Furthermore, the chapter describes cases in which compliance with the provisional measures order produced a situation of even greater risk. In certain other cases problems with compliance lay in the lack of confidence in protection bodies, forcing the beneficiaries to renounce or reject the protection. On the positive side, compliance with provisional measures of protection also resulted in the end of life-threatening situations; in some cases it opened the possibility for the beneficiary to regain work; and in other situations it ended harassment and threats.

The final chapter briefly assesses the relevant norms and jurisprudence reaffirming the binding nature of the provisional measures issued by the IACtHR.

As an overall evaluation, the book is a valuable tool for practitioners. The vast number of cases assessed and the accuracy of the information explored contribute to the understanding of this important instrument for human rights protection. Nevertheless, this is not a book that innovates or challenges any of the theories underlying the adoption of provisional measures by the IACtHR or in general by any court. It is a descriptive work, providing data, tables and some analysis.

Perhaps the author's intention was to produce exactly such a manual for practical use; yet a greater theoretical discussion can be expected from a highly-specialised book. For instance, when the author explores the notion of extreme gravity as one of the substantive conditions of admissibility (p. 86), she presents two conflicting points of view and indicates the Court's position based on its jurisprudence. There is no further analysis concerning the impact and benefit of one approach or the other, nor do any comparative considerations follow. Moreover, when the book discusses compliance by states with measures of protection (Chapter 7), particularly when it shows the number of beneficiaries killed, there is only timid analysis of the reasons for such a high failure rate. The numbers require, besides the description of the jurisprudence, a more profound debate over the effectiveness and consistency of the current model of provisional measures in the Inter-American system of human rights.

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