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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Rafael Ivan Suarez-Rosero v. Ecuador
Doc. Type: Order of the Court
Decided by: President: Hector Fix-Zamudio;
Judges: Hernan Salgado-Pesantes; Alejandro Montiel-Arguello; Oliver Jackman; Antonio A. Cancado Trindade
Dated: 28 June 1996
Citation: Suarez-Rosero v. Ecuador, Order of the Court (IACtHR, 28 Jun. 1996)
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HAVING SEEN:

1. The petition of March 15, 1996 and its annexes, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), pursuant to Article 63(2) of the American Convention on Human rights (hereinafter "the Convention" or "the American Convention") and Article 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures in regard to the Suárez-Rosero Case now under consideration by the Court. In that petition the Commission requested the Court to order the provisional measures necessary to preserve the physical and moral integrity of Mr. Rafael Iván Suárez-Rosero, claimant and alleged victim in that case.

2. The basis of the Commission's request, that there was reason to fear for the physical and moral safety and integrity of Mr. Suárez-Rosero, who was detained at the time in connection with a judicial process.

3. The Order of April 12, 1996, issued by the President of the Court in exercise of the authority conferred on him under Article 24(4) of the Rules of Procedure and in consultation with the other judges of the Court, who submitted their observations in writing. In that order, the President decided:

1. To request that the Government of the Republic of Ecuador adopt forthwith such measures as are necessary to effectively ensure the physical and moral integrity of Mr. Rafael Iván Suárez-Rosero, so that any provisional measures that the Inter-American Court may take can have the requisite effect.

2. To request that the Government of the Republic of Ecuador submit a report to the President of the Court every thirty days from the date of this Order, on the measures taken pursuant to this Order, so as to bring the information to the attention of the Court.

That Order of the President was based on the following considerations:

4. That in the instant case, which has been submitted to this Tribunal, the Inter-American Commission requests that the Court seek from Ecuador such provisional measures as are "necessary to ensure that Mr. Iván Suárez-Rosero is immediately released pending continuation of the procedures."

5. That the situation of Mr. Suárez-Rosero, as stated by the Commission, may be categorized as extremely grave, inasmuch as it may cause him irreparable damage since, as the Commission stated, "he has been held in preventive detention for a longer period than he would have served had he been tried and convicted."

6. That, nonetheless, the provisional measures requested imply anticipation of certain effects that would be produced by the judgment on the merits which this Court may deliver, since in its request the Commission considers that the imprisonment of the alleged victim violates the American Convention. These are precautionary measures described in legal writings as partially restitutive or anticipatory and which the court cannot prescribe without first hearing the adversary, in this case the Government of Ecuador, one requisite being a preliminary analysis of the situation that necessitates the order for provisional measures.

7. That by the terms of Article 24(4) of the Rules of Procedure, "[i]f the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court, in its next session, to have the requisite effect."

8. That in accordance with this precept, the President of the Court is authorized to order urgent measures only; it is therefore for the Court at its next session to decide on the appropriateness of the anticipatory provisional measures sought by the Commission, which can only be granted after the Government concerned has been heard.

4. The expansion of the Commission's request of April 12, 1996, in which it asked the Court that the measures adopted be expanded to include Mr. Suárez-Rosero's wife, Margarita Ramadán de Suárez, and their daughter, Micaela Suárez-Ramadán. The expansion was based on an alleged attack on Mr. Suárez-Rosero on April 1, 1996 and threats and harassment to which his family had been subjected since that date.

5. The Order of April 24, 1996, issued by the President of the Court in exercise of the authority conferred on him by Article 24(4) of the Rules of Procedure of the Court, in consultation with the other judges of the Court, in which he decided:

1. To request that the Government of the Republic of Ecuador expand the provisional measures established in the Order of the President of April 12, 1996 to include Mrs. Margarita Ramadán de Suárez and her daughter, Micaela Suárez-Ramadán, investigate the events denounced by the Inter-American Commission on Human Rights, and punish those responsible.

2. To submit this Order for the Court's consideration and pertinent effects during its next regular session.

3. To request that the Government of the Republic of Ecuador include in the reports it shall present every thirty days to the President of the Court, pursuant to his Order of April 12, 1996,

the measures taken in compliance with this Order so that they may be brought to the attention of the Court.

That Order of the President was based on the following considerations:

3. That in the expansion of its request for adoption of provisional measures, the Commission indicates that on April 1, 1996 Mr. Suárez was warned "not to forget that he had relatives outside." Although the Commission does not specify who made the threats nor does it provide any further detail or description of the event, it must be borne in mind that Mr. Suárez is in the midst of a far-reaching criminal process involving crimes connected with drug trafficking, which causes the Commission concern about the threats to his wife, Mrs. Margarita Ramón de Suárez, and their daughter, Micaela Suárez-Ramón.

4. That with regard to the Commission's second request, concerning the "attack" on Mr. Suárez, consideration must be given to the police report of April 1, 1996, provided by the Commission for the consideration of the Court, indicating that Mr. Suárez suffered a superficial wound as a result of quarrel which, it is stated, broke out when he himself approached Mr. Jorge Reyes "to complain about a pending action." The same report also indicates that the person responsible for these acts was punished in accordance with the prison regulations in force in Ecuador.

5. That there are therefore two contradictory versions of the manner in which the alleged events occurred, and the Court has no further information at its disposal until the Government presents its first report in accordance with the second paragraph of the operative part of the April 12, 1996 Order of the President of the Court. However, States are obliged to protect the lives and physical integrity of their citizens in any circumstance, all the more so in this specific case in which the statements of Mr. Suárez-Rosero and Mrs. Ramón de Suárez have been presented to the Court as part of the Commission's stock of evidence in a judicial process to determine whether or not the human rights enshrined in the American Convention have been violated by a State Party. This circumstance requires the Government to guarantee that neither witnesses nor their families shall be the victims of any sort of reprisal on account of their testimony to this Court.

6. The certified copy of written communication No. 861-CSQ-P-96 of the President of the Superior Court of Justice of Quito and the ruling of April 16, 1996, at 10:00 a.m., of the First Chamber of that Court, "whereby [the Government communicated that] the order had been given for Mr. Rafael Iván Suárez-Rosero's release." Those documents were presented by the Government of the Republic of Ecuador at the Secretariat of the Court on May 29, 1996.

7. The petition presented by the Inter-American Commission on Human Rights on June 10, 1996, whereby it informed the Court that "the safety of Mr. Suárez and his family does not appear to be threatened at this time" and, as a consequence, also communicated its decision to "desist from the request for provisional measures to protect the physical and psychological integrity of Mr. Suárez and his relatives ... reserving the right to make a further request for provisional measures should there be a change of circumstances." The Commission also noted that the decision to desist from the above-mentioned request was taken "without prejudice to the hearing of the case, in regard to which it requests the Honorable Court to proceed with it."

CONSIDERING:

1. That Ecuador is a State Party to the American Convention, Article 1(1) of which sets forth the obligation of the States Parties to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, and that on July 24, 1984 Ecuador accepted the competence of this Court pursuant to Article 62 of the Convention.
2. That, in the instant case, the Inter-American Commission recently informed the Court that it was desisting from its requests for provisional measures on the grounds that the circumstances of extreme gravity and urgency that had inspired the adoption of urgent measures no longer existed, a fact demonstrated by the release of Mr. Rafael Iván Suárez-Rosero by the Government of Ecuador, and that there was currently no risk to the safety of Mr. Suárez-Rosero and his family.
3. The reasons that led the President to order urgent measures in this case had ceased to exist.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of the powers conferred on it by Article 63(2) of the American Convention on Human Rights and Article 24 of the Rules of Procedure of the Court,

DECIDES:

To lift the urgent measures issued by the President of the Court, in the light of the new circumstances indicated both by the Inter-American Commission on Human Rights and the Government of the Republic of Ecuador.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes
Alejandro Montiel-Argüello
Oliver Jackman
Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles

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Secretary