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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Josue Giraldo Cardona v. Colombia
Doc. Type: Order of the Court
Decided by: President: Hector Fix-Zamudio;
Judges: Hernan Salgado-Pesantes; Alejandro Montiel-Arguello; Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli; Antonio A. Cancado Trindade
Dated: 5 February 1997
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HAVING SEEN:

1. The brief of October 18, 1996, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures on of behalf Sister Noemy Palencia, Islena Rey Rodríguez, Gonzalo Zárate, Mariela de Giarldo and her two young daughters, Sara and Natalia Giraldo, in connection with case No. 11.690, before the Commission against the Government of the Republic of Colombia (hereinafter "the State", "the Government" or "Colombia"), pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"). The request of the Commission was justified in that the above-mentioned persons are members of the Meta Civic Committee of Human Rights, and have been victims of threats, harassment and persecution, including the murder of their President, Doctor Josué Giraldo Cardona, despite being protected by a request for precautionary measures by the Commission to the Government.

2. The Order of the President of the Court (hereinafter "the President") of October 28, 1996, in which he decided:

1. To call upon the State of Colombia to adopt, forthwith, such measures as may be necessary to protect the life and physical integrity of Sister Noemy Palencia, Islena Rey Rodríguez, Gonzalo Zárate, Mariela de Giraldo and her two young daughters Sara and Natalia Giraldo, and to avoid irreparable damage to them, in strict compliance with the obligation to respect and guarantee the human rights it has contracted to in accordance with Article 1(1) of the American Convention on Human Rights.

2. To call upon the Government of Colombia to adopt, forthwith, such measures as may be necessary to ensure that the aforementioned persons can continue living in their habitual

residence and to return to their homes, providing them the assurance that they will not be persecuted or threatened by agents of the Government or by civilians.

3. To call upon the Government of Colombia to investigate the denounced events against the members of the Meta Civic Committee of Human Rights, in order to punish those responsible for these acts, particularly for the murder of Josué Giraldo Cardona.

4. To call upon the Government of Colombia to report to the Court within 15 days, and later every 30 days, as of notification of this Order, on the urgent measures it has taken. To also call upon the Inter-American Commission on Human Rights to submit its observation on said information to the Court within 15 days as of receipt of the Government reports.

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

3. The November 12, 1996 brief presented by Sister Noemy Palencia and Islena Rey Rodríguez in which they expressed that the measures taken by the Government put them in a situation of higher risk because it consists of placing "within their places of work and home armed men that belong to the local and regional security organizations of the State...on [which] lie the strongest suspicions of brokering the persecution against members of the Committee"

4. The first report of the Government of November 13, 1996, in which it enumerated the urgent measures taken in accordance with the Order of the President of October 28 of the same, and it declared that it had "reassumed" the work of protecting the indicated persons. It also indicated that on November 7, 1996, in the city of Villavicencio, the National Police conducted an investigation in which it included the personal interview of Sister Noemy Palencia, Islena Rey Rodríguez, and Mariela de Giraldo. It stated that it was not possible to locate Gonzalo Zárate because he left the city after the murder of Josué Giraldo Cardona. It stated that it had installed a guard service in the residence and place of the work of Islena Rey Rodríguez, but that Sister Palencia accepted the guard service only in her place of work. The Government indicated that Mariela de Giraldo accepted the service and that it had begun watching over her and two young daughters with the Administrative Department of Security (DAS). Similarly, it declared that it issued orders to conduct security studies of the mentioned persons. Finally, the report stated that the Attorney General of the Nation ordered the Office of Victims and Witness Protection to forward the corresponding security studies. In regards to the investigations, it states that the Regional Prosecutor of the East moves forward with the investigation to find those responsible for the threats to the members of the Meta Committee of Human Rights.

5. The observations of the Commission of November 29, 1996, to the first report of the Government, in which it states that the most effective measure the Government can take is to act against its own security members and dismantle the criminal structure that exists in The Meta. It also commented that it could not protect the threatened persons with members of the institutions from where the threats originate and that it has pressured the protected persons to accept the service of armed body guards or that, in the alternative, they sign a document renouncing the protection of the State. The Commission considers that this pressure is not acceptable and that the State should search for the most effective measures of protection, always in consideration of the needs of the protected. It also stated that the type of protection could be offered by the Office of Victim Protection "also does not constitute a lone solution, given that said protection consists of removing the persons at risk from their place of work and residence."

In regards to the actual situation of the protected persons, it indicated that Mrs. Mariela Duarte de Giraldo and her daughters had opted, after signing a document renouncing the protection of the State, to hide themselves in the homes of family members and friends instead of accepting an armed escort. It reported that Dr. Gonzalo Zárate felt obligated to leave Villavicencio when he discovered recognized hired assassins had been asking for him at his work.

6. The second report of the Government of December 17, 1996, in which it stated it had adopted the “suitable measures,” which have consisted of the immediate initiation of a protection plan and in conducting new security studies. It stated that the protection plan for Noemy Palencia and Islena Rey Rodríguez consisted of nighttime surveillance and sporadic patrols by the national police in the area of their homes, of daytime surveillance of their places of work and personal bodyguards in their daily movements between their homes and their places of work. It indicated that the personal bodyguard service had not extended to their homes nor to their places of work and that it was not given on the weekends. In regards to Mrs. Mariela de Giraldo and her daughters, it reported that on last November 12, “it tried to locate the woman...but it was impossible since she had moved from her home, not knowing to this moment her whereabouts.” It stated that on November 8, 1996, Mrs. Mariela stated her wish not to utilize the protection service, since she considered that neither she nor her daughters were under any risk. Finally, the Government petitioned the Court to hold a public hearing so that the State, the Commission, and the petitioners could express their points of view on the advances made in this matter.

7. The brief of January 15, 1997 of the Commission’s observations to the second report of the Government, in which it communicated that it “had received information that indicated that the situation of risk and danger continued for the persons that should be protected.” It indicated that Sister Noemy Palencia had told of being followed and suspicious surveillance. Similarly it added that:

[f]or the persons related to the Meta Committee of Human Rights and with its member Josué Giraldo Cardona, there continues to exist a situation of “extreme gravity and urgency.” The provisional measures dictated by the President should be ratified by the full Court and should apply in their entirety, including an effective control by the Colombian State on the institutions against which there is proof of participation in the harassment of the members of the Meta Committee of Human Rights[.]

It also expressed that:

The Commission, adheres to the petition of the Government requesting the Court to convoke a public hearing to discuss the implementation of the [measures].

In the same communication, the Commission argued that in this case “there are indications that show that agents of the security forces of the Colombian Government were involved in the death of Josué Giraldo and in the persecution of the Meta Committee of Human Rights” and that it considered that “it is reasonable to exhort the Government to avoid naming agents from the same organs to provide personal armed protection to the persons protected by the Order of the President of the Court.”

8. The third report of the Government of January 20, 1997, in which it stated that it had not found Mariela Duarte de Giraldo to receive her declaration and that “the reluctance of the woman [Giraldo] has impeded the development of the protection work.” It also indicated that Sister Noemy Palencia and Islena Rey Rodríguez currently have personal guards. It explained that Gonzalo Zárate, despite not having returned to Villavicencio, has been assigned a bodyguard who will begin service as soon as his whereabouts are discovered. Finally, in regards to the investigation of the murder of Josué Giraldo Cardona, the Government indicated that it had not produced a decision but that it is moving ahead with the evidence process that was ordered in December.

CONSIDERING:

1. That Colombia has been a State Party to the American Convention since July 31, 1973, whose Article 1(1) sets forth the obligation of the States Parties to respect the rights and freedoms recognized in this treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms. The Government of Colombia accepted the compulsory jurisdiction of the Court on June 21, 1985.

2. That Article 63(2) of the Convention provides that:

[i]n cases of extremity 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 its consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That the October 28, 1996 Order of the President was adopted pursuant to law and in accordance with the merits of the events and circumstances that justified the adoption of urgent measures and that this Court ratifies in all its terms.

4. That the Commission asks this Tribunal to maintain the provisional measures in the present case, due to the “continuing existence of a situation of extreme gravity and urgency”.

5. That the Court considers it pertinent to point out that the State has the duty, in accordance with the Order of the President of October 28, 1996, to order such measures as may be necessary “to ensure that the indicated persons can continue living in their habitual residence and to return to their homes, providing them the assurance that they will not be persecuted or threatened by agents of the Government or by civilians”.

6. That similarly, the Government of Colombia has the obligation to investigate the events that motivated this request for provisional measures in order to identify those responsible and to impose the corresponding sanction, particularly in regards to the murder of Josué Giraldo Cardona.

7. That contradictions exist between the reports of the Government and the Commission in regards to the nature of the provisional measures and the effects they may produce and that the parties have requested the Court to hold a hearing to discuss the implementation of the same, which this Tribunal considers opportune.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred on it by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDE:

1. To ratify the Order of the President of October 28, 1996.
2. To call upon the State of the Republic of Colombia:
 - a. That it maintain the provisional measures on behalf of Sister Noemy Palencia, Islena Rey Rodríguez, Gonzalo Zárate, Mariela de Giraldo and her two young daughters, Sara and Natalia Giraldo.
 - b. That, as an essential element of the duty to protect, it take effective measures to investigate, and in its case, to punish those responsible for the events.
3. To call upon the Government of the Republic of Colombia to report every two months on the provisional measures it has taken.
4. To call upon the Inter-American Commission on Human Rights to submit to the Court its comments on that information at the latest within one month of its receipt thereof.
5. To summon the representatives of the Government of Colombia and the Inter-American Commission on Human Rights to public hearing on the matter in question, to be held at the seat of the Court on April 13, 1997, at 10:00 a.m.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes
Alejandro Montiel-Argüello
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli
Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary