

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Jorge Carpio Nicolle v. Guatemala
Doc. Type: Order of the Court
Decided by: President: Hernan Salgado Pesantes;
Judges: Antonio A. Cancado Trindade; Hector Fix-Zamudio; Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli
Dated: 19 September 1997
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HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Tribunal”) of June 4, 1995, in which it decided:

1. To request that the Government of the Republic of Guatemala adopt without delay all necessary measures to effectively ensure the protection of the lives and personal integrity of the following persons: MARTA ELENA ARRIVILLAGA DE CARPIO, KAREN FISCHER DE CARPIO, MARIO LÓPEZ-ARRIVILLAGA, ANGEL ISIDRO GIRÓN-GIRÓN, and ABRAHAM MÉNDEZ-GARCÍA, and to investigate the threats and harassment of the persons named and to punish those responsible.
2. To request that the Government of the Republic of Guatemala adopt all necessary measures so that witnesses to the Carpio Case can testify, and so that the prosecutor in the case, Abraham Méndez-García, can fulfill his duties without pressure or reprisals.
3. To request that the Government of the Republic of Guatemala inform the military authorities of the Military Zone to which the Civil Defense Committees of San Pedro Jocopilas answer, to instruct these Committees to refrain from taking any actions that would put the lives or personal integrity of the individuals named at risk.
4. To request that the Government of the Republic of Guatemala 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.
5. To instruct the Secretariat of the Court to transmit the reports presented by the Government of the Republic of Guatemala to the Inter-American Commission on Human Rights without delay, which shall then present its observations not later than fifteen days after receipt of the pertinent information.
6. To submit this Order for the Court’s consideration and pertinent effects during its next regular session and, if it deems it appropriate, to hold a public hearing on this matter during that same period.

2. The Order of the President of the Court (hereinafter “the President”) of July 26, 1995 in which it called upon the State of Guatemala (hereinafter “the State” or “Guatemala”) to expand the urgent measures adopted in this case, on behalf of Ms. Lorraine Marie Fisher Pivaral and that it investigate those responsible for the attack, denounced by the Commission in its brief of July 20, 1995, committed against her.

3. The Order of the Inter-American Court of September 19, 1995, in which it decided to “confirm and to adopt as its own the urgent measures taken by the President in the Orders of June 4 and July 26, 1995”.

4. The Order of the Court of September 10, 1996, in which it continued the provisional measures adopted in its Order of September 1995, and extended by Order of February 1, 1996.

5. The reports of the State of Guatemala, received in the Secretariat of the Tribunal on September 30 and December 3, 1996; January 27, April 4, and June 4, 1997. In this last report, the State reported that:

[t]he respective orders of the Department of Criminological Investigations have been reiterated by the General Office of the National Police to continue the investigations to clarify the threats and harassment of which the mentioned persons claim to have been victim.

In regards to the investigation being carried out by the Public Ministry, this entity has reported that the investigation is continuing for the clarification of the events.

6. The briefs containing the observations of the Inter-American Commission on Human Rights (hereinafter “the Commission” and the previous reports, received in the Court on November 1, 1996, February 4, and March 31, 1997.

7. The observations of the Commission of June 13, 1997, in which it requested the Court to order the State to comply with the provisional measures previously adopted in the Orders of the Court, specifically to:

1. adopt without delay the measures necessary to efficiently ensure the protection of life and physical integrity of : Marta Elena Arrivillaga de Carpio, Karen Fisher and Lorraine Fisher.
2. to seriously investigate the threats, and acts of intimidation that the victims have suffered in this case and that they be opportunely denounced.

8. The observations of the Commission of July 16, 1997, in which it reported that the petitioners had “stated that, contrary to what the Government says, the case No. 1011-97... that deals with the threats and intimidation against the victims, has been closed”. As a result, the Commission requested that the Court call upon the State to report on “the situation of case No. 1011-97, and on the concrete advancements in the investigations of the properly denounced threats and intimidation”.

9. The brief of the Commission of August 26, 1997, in which it presented the Court a copy of the judicial resolution, ordering the closing of the proceedings in the investigation of threats

made against the persons protected by the provisional measures adopted in this case, since the individuals responsible could not be identified during the investigation.

10. The twentieth report of the State of September 3, 1997, in which it referred to the security measures provided to Marta Arrivillaga, widow of Mr. Carpio, Karen Fischer de Carpio, and it communicated that Ms. Lorraine Marie Fischer Pivaral did not have any type of security at the moment.

CONSIDERING:

1. That Guatemala is a Party to the American Convention on Human Rights in which Article 1(1) sets forth the obligation of the State Parties to respect the rights and freedoms recognized in that treaty and to ensure their free and full exercise to all persons subject to its jurisdiction, and that on March 9, 1987, Guatemala accepted the compulsory jurisdiction of this Court pursuant to Article 62 of the Convention.

2. That Article 63(2) of the Convention provides 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. That the State, in accordance with the Orders of the President of June 4 and July 26, 1995, and that of the Court of September 19, 1995, has the obligation to effectively ensure the life and physical integrity of the persons mentioned in the requests of the Commission and to seriously investigate the threats and acts of intimidation they have suffered; an obligation that continues since the provisional measures remain in effect.

4. That, despite the above, there exists a controversy in regards to the effectiveness and the status of the investigation the State is conducting in the present case. The petitioners have stated to the Commission that said investigation has been closed, which is contrary to that indicated by the State. Therefore, it is necessary for the Court to receive broader information in order to determine if the State is complying or not with the orders of the Court. Given that said information should be in the hands of the State, it should present this information to the Court.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Articles 63(2) of the American Convention on Human Rights and 25(1) and 25(2) of its Rules of Procedure,

DECIDES:

1. To call upon the State to include in its next report the appropriate documentation on the status of case No. 1011-97 and the concrete advances made into the investigations of the denounced threats and acts of intimidation.

2. To call upon the State to continue to report to the Court every two months from the date of notification of this Order on the measures it has taken in this case, and upon the Inter-

American Commission on Human Rights to continue submitting its comments on that information to the Court not later than six weeks from the date of its receipt.

Hernán Salgado Pesantes
President

Antônio A. Cançado Trindade
Héctor Fix-Zamudio
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary