

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Rosember Clemente Teheran, Armando Mercado, Nilson Zurita Mendoza, Edilberto Gaspar Rosario, Dorancel Ortiz, Leovigildo Castillo, Santiago Mendez, Zoila Riondo, Saul Lucas, Jose Guillermo Carmona, Celedonio Padilla, Eudo Mejia Montalvo, Marcelino Suarez Lazaro, Fabio Antonio Guevara, Jose Luis Mendoza, Misael Suarez Estrada, Ingilberto M. Perez, Martin Florez, Jacinto Ortiz Quintero, Juan Antonio Almanza Pacheco, Jose Carpio Beltran and Luis Felipe Alvarez Polo v. Colombia
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HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) of June 19, 1998.
2. The fourth report of the State of Colombia (hereinafter “the State” or “Colombia”) of October 9, 1998, in which it asserted that the State was undertaking educational activities and fulfilling its duties of vigilance and control in order to provide the Zenú Indigenous Community (hereinafter “the Community”) better security; that it had investigated the denounced acts and punished the persons responsible for the acts of violence against the members of the Community, and that it requested that the normal processing of this case be continued before the Inter-American Commission on Human Rights (hereinafter “the Commission”) inasmuch as the premises of Article 63(2) of the American Convention on Human Rights (hereinafter “the Convention”) were not present.
3. The fifth report of the State dated December 15, 1998, by means of which it stated:
 - a) With respect to the communications between the State and the community: that meetings were held periodically between the national and local authorities and the members of the Community for the purpose of dealing with their different plans.
 - b) With respect to the persons protected: that on October 26, 27, and 28, 1998, a Zenú indigenous conference took place in the Community of Bajo Grande, in the jurisdiction of the Municipality of San Andrés de Sotavento, under the protection of the National Police; that at this conference “guidelines were set for internal elections”; that on October 30, 1998, in the installations of the National Police of San Andrés de Sotavento, the Communications Network of Zenú Protection was formally inaugurated, an event that was attended by departmental and local authorities and a large part of the community, “which expressed its appreciation for the efforts

made by the National Government”; that two portable radios were given to Marcelino Suárez, Head Chief, and Nilson Manuel Zurita, Indigenous Councillor; that the Department of the Interior expressed its preoccupation concerning “the improper behavior” of Councillor Nilson Zurita, who has failed to comply with the recommendations made by the Protection Program of that Department, knowing that, in accordance with the regulations of that program, his neglect of the recommendations authorizes the “Committee of Regulations and Evaluation of Risks” to suspend or definitely take away the measures of protection; that the State has made great efforts without sparing resources, for the purpose of preserving the life and physical safety of the members of the Community and improving the quality of life and the expansion of protection, and that the “programs of assistance to the Community” offered by the State have been developed without any setbacks, a situation recognized by the indigenous authorities and the population in general.

c) With respect to the investigation of the denounced acts: the Office of the Public Prosecutor has investigated and punished the persons “who sponsor groups on the fringe of the law”; that it detained William Alberto Tulena, who is implicated in the acts of violence against the indigenous people of the Community; that Juan Bautista Casado Romero, former mayor of San Andrés de Sotavento, was summoned to testify and was heard in the inquiry of the investigation made into the homicide of four indigenous person from the municipality and that the Legal Representative of the Justice Department for Criminal Matters established three special agencies because of the homicide of various members of the Indigenous Community.

The State also requested “that the present case continue to be processed regularly by the Inter-American Commission on Human Rights, since the premises for the application of Article 63(2) are not present, without prejudice, of course, to the commitment of the Colombian State to continue providing special attention to the various denounced situations and to the Zenú Indigenous Community in general.”

4. The January 13, 1999 observations of the Commission in which it stated the following:

a) With respect to the measures of protection: that the petitioners reject the use of the “Security Schools” for the community; that the Commission for the Rights of Indigenous People of the Ministry of the Interior has stated that “the creation of Schools for Indigenous Security can in a given moment commit an offense against the ethnic and cultural identity of the indigenous peoples”; that, for that reason, it has recommended the definite suspension of this initiative in certain regions of the country, and that it is necessary to review this measure of protection; that it agrees with the State as to the necessity of trying those responsible for the violence suffered by the Community, but it disagrees that the State has not been able to make progress in the investigation due to the lack of cooperation on the part of the indigenous authorities; that the judiciary has the means to force witnesses to appear, and that the Commission calls upon the State to comply with its obligation under the Convention to seriously investigate those acts and to bring to trial and to punish those responsible.

b) With respect to the difficulties and delays in the submission of the observations of the Commission: that the delays have been caused by the geographic situation of the Community, the delicate political-military context, and lack of access to the necessary information to evaluate the effectiveness of the measures; that the petitioners have expressed their concern with the difficulties that they experience in obtaining the information to make the reports of the

Commission and have suggested the use of a joint work approach that allows for the interchange of information between the State, the representatives of the Community, and the Indigenous Organization of Colombia.

c) Its concern with the effectiveness of the measures of protection implemented by the State: that these measures, along with the failure to try those responsible for the violence, do not offer an alternative of coexistence for the Community; that they regret the lack of communication with the Court and consider that the continuance of the measures is justified, although in the future they will be reevaluated, and that it will continue to call for the collaboration of the petitioners, the representatives of the Community, and the State in this task.

5. The January 20, 1999, writing of the Inter-American Commission, by means of which it submitted an expansion of its observations of January 13 of the same year, in which it stated:

a) That on the days November 20 and 26, 1998, the State convoked meetings concerning the implementation of the provisional measures which were attended by officials of the Ministry of the Interior, the Presidential Council on Human Rights, the Office of the High Commissioner for Peace, the Public Defender, the National Indigenous Organization of Colombia, the indigenous community, and the petitioners; that in these meetings a member of the Community stated that around 150 persons had been assassinated in the Reservation as a consequence of the continuing situation of threats and harassment; that the same member of the Community stated that two members had been taken to the Administrative “Office” of Security (DAS), where they hold meetings of paramilitaries, and they were told that “if care wasn’t taken the next indigenous chief could be a paramilitary”; that that member moved away from the area due to the threats he had received, and lastly, that he did not know of the fact that the Court had ordered provisional measures to protect the Community.

b) That despite the agreement reached on October 6, 1998, between the representatives of the State, the petitioners, and the Relator of the Commission, the State continued to meet with the Community without informing the petitioners; that the petitioners are prepared to collaborate with the State for the purpose of implementing the measures in the most effective manner; that the creation of a Follow-up Committee that permits the participation of the petitioners to attain this purpose is urgent; that the petitioners submit the testimony of a member of the indigenous community who is a member of the reservation, who stated that Clemente Teherán (councilman), Juan Carlos Casado (mayor), and Marcelino Suárez (chief) “could count on the support, could be connected, or could even lead special armed groups”; that these allegations are worrisome “since they reveal the possible connection of persons protected by provisional measures with paramilitary groups,” and that “that does not prevent maintaining the measures originally ordered in force, since ... the members of the Community whose personal safety is threatened as a consequence of the illegal activities carried on by its leaders in conjunction with other groups, should not be unprotected.”

Moreover, the Commission also asked the Court to maintain the agreed measures, that it order that these measures be implemented with due diligence so as to confront the delicate situation of the Community and to protect the members whose physical safety is threatened; that it order the State to carry out a serious and in depth investigation of the alleged connections of certain leaders and members of the Community with illegal groups, and that it intercede in favor of the

creation of a Follow-up Committee for the implementation of the agreed measures that includes that participation of the petitioners.

CONSIDERING

1. That Colombia has been a State Party to the American Convention since July 31, 1973, and that on June 21, 1985, it accepted the jurisdiction of the Court.
2. That Article 63(2) of the American Convention provides that in cases of “extreme gravity or urgency, and when necessary to avoid irreparable damage to persons,” the Court, in matters that have not yet been submitted to the Court, may, at the request of the Commission, adopt such provisional measures as it deems pertinent.
3. That under the terms of Article 25(1) of the Rules of Procedure of the Court:
[a]t any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.
4. That Article 1(1) of the Convention sets forth the obligation of the States Parties to respect the rights and freedoms recognized in that treaty and to ensure their free and full exercise to all persons subject to their jurisdiction.
5. That it is the responsibility of the State to adopt security measures for all citizens, a commitment for which special efforts must be taken when it concerns persons involved in hearings before organs of the Inter-American system for the protection of human rights, which are established to determine whether or not the human rights set forth in the American Convention have been violated.
6. That “a case of extreme gravity and urgency” continues which justifies the maintenance of the provisional measures adopted on behalf of the persons protected by provisional measures in the Order of June 19, 1998.
7. That the State has a duty to seriously investigate the threats and acts of intimidation that the protected persons have suffered, a duty that persists while the provisional measures remain in effect.
8. That the State and the Commission should investigate the truthfulness of the possible connection of persons protected by the provisional measures with illegal groups, especially the possible participation of Rosember Clemente Teherán (councilman), Juan Carlos Casado (mayor), and Marcelino Suárez (chief) in armed paramilitary groups.
9. That, moreover, Colombia should make all relevant efforts so that the implementation of the measures adopted by the Court be carried out with the participation of the petitioners, in such a way that they are provided in a diligence, serious, and effective manner.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in the 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.

DECIDES:

1. To require that the State of Colombia maintain the measures necessary to protect the lives and physical safety of Rosember Clemente Teherán, Armando Mercado, Nilson Zurita, Edilberto Gaspar Rosario, Dorancel Ortiz, Leovigildo Castillo, Santiago Méndez, Ziola Riondo, Saul Lucas, José Guillermo Carmona, Celedonio Padilla, Eudo Mejía Montalvo, Marcelino Suárez Lazaro, Fabio Antonio Guevara, José Luis Mendoza, Misael Suárez Estrada, Ingilberto M. Pérez, Martín Florez, Jacinto Ortíz Quintero, Juan Antonio Almanza Pacheco, José Carpio Beltrán, and Luis Felipe Alvarez Polo, in order to avoid irreparable damage to them, in strict conformity with the obligation to respect and guarantee human rights, which it undertook to fulfill under Article 1(1) of the American Convention on Human Rights.
2. To require the State of Colombia to investigate the acts denounced that gave rise to the present measures, for the purpose of obtaining effective results which will lead to the discovery and punishment of those responsible.
3. To require that the State of Colombia investigate the truthfulness of the possible connection of the persons protected by the provisional measures with illegal groups, especially the possible participation of Rosember Clemente Teherán (councilman), Juan Carlos Casado (mayor), and Marcelino Suárez (chief) in armed paramilitary groups.
4. To require that the State listen to the opinions of the petitioners and inform them as to progress in the implementation of the measures ordered by the Court.
5. To require that the State of Colombia, in its next report, include information on the measures adopted in relation to the operative paragraphs of the present Order.
6. To require that the State of Colombia continue to submit its reports every two months on the provisional measures taken and that the Inter-American Commission on Human Rights present its observations to those reports within a period of six weeks of their receipt.