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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Maria Elena Loayza Tamayo v. Peru
Doc. Type: Order
Decided by: President: Antonio A. Cancado Trindade;
Judges: Maximo Pacheco Gomez; Hernan Salgado Pesantes; Oliver Jackman;
Alirio Abreu Burelli; Sergio Garcia Ramirez; Carlos Vicente de Roux
Rengifo
Dated: 3 February 2001
Citation: Loayza Tamayo v. Peru, Order (IACtHR, 3 Feb. 2001)
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HAVING SEEN:

1. The brief of November 30, 2000, and its annexes, received by the Secretariat of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) on December 5, 2000, in which Michelangela Scalabrino submitted to the Court a request for provisional measures in relation to the Loayza Tamayo case regarding Peru (hereinafter “Peru” or “the State”), in the name of María Elena Loayza Tamayo (hereinafter “Mrs. Loayza Tamayo”), pursuant to Article 63.2 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 25 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”). In this brief, Mrs. Scalabrino requested the Court:

[to] take urgently all provisional measures so that María Elena Loayza Tamayo may recover the amount of money established by the Court as fair compensation, together with the interest thereon and other material and moral damages relating to the violations arising from non-compliance with the judgment on reparations by Peru, which will allow her to emerge from the misery in which she is living, cease to live on charity and begin to enjoy a “worthwhile life”; [so that] she may develop a new (although limited) life path, begin new professional training which she is able to do abroad, while her personal situation continues to be insecure in Peru; [so that] she can take care of her health appropriately; [and so that] she can defray her children’s needs, personally and directly, after having suffered the humiliation that they are cared for by their grandparents and aunts.

Mrs. Scalabrino also stated that the provisional measures could:

include, if necessary: accounts and/or sums of money that the Peruvian State has abroad or is about to receive from abroad (from other States that are Parties to the Convention or not, or from international organizations) [and that these] should be made available to the victim up to the amount to which the Court declares the victim has the right; [also] that, in this case, the Court

[...] should rule that the victim and/or her lawyers should receive all necessary assistance to recover this amount in the place where she is; [and] that the ad hoc expenses and fees arising from the necessary actions shall be included in the amount.

Mrs. Scalabrino based the request for provisional measures on the following considerations:

- a) The Court retains competence to decide on this request, because the case is at the procedural stage of the execution of the judgment on reparations, and also because the victim is legally authorized to act before the Court to this end;
- b) The State has still not fulfilled the Court's mandate that, in accordance with the Court's Order of November 17, 1999, it comply rapidly with the judgment on reparations delivered on November 27, 1998;
- c) The situation of Mrs. Loayza Tamayo, who suffered severe physical and mental health problems during her imprisonment, which have become worse as a result of the cruel, inhuman and degrading treatment to which she was submitted. She is now living in Santiago, Chile; she does not work and she receives medical treatment financed by a non-governmental organization, the Fundación de Ayuda Social de Iglesias (hereinafter "FASIC");
- d) For more than a year, Mrs. Loayza Tamayo has not received the necessary continuous medical treatment, but only occasional treatment provided by Chilean doctors when she can afford to pay them and also pay for the medicines. Her medical problems consist of several types of ailments that require continuous medical treatment so that her situation does not get worse, although there is no real possibility of *restitutio in integrum*. FASIC and the United Nations office in Santiago lack the means to continue attending to this case;
- e) Owing to her physical and mental or emotional condition, Mrs. Loayza Tamayo has often been unable to find permanent work. She only finds occasional work, which is not appropriate for her level of education and her personal and social potential, which does not allow her to live decently and which aggravates her tension and anxiety and her feelings of discrimination, humiliation and frustration with the exile she was obliged to go into, because she feared that she might lose her freedom in Peru. Her family cannot offer her economic assistance, because they are taking care of her children;
- f) Peru did not comply with the decisions of the judgment on reparations concerning the victim's children, her other next of kin or her lawyer;
- g) Peru is obliged to comply with the legal obligations arising from the Pact of San José, Costa Rica;
- h) Although it does not eradicate the consequences suffered by Mrs. Loayza Tamayo, the fair and reasonable compensation established by the Court constitutes her only possibility of improving her living conditions, paying for her health care and preventing her health from continuing to get worse. Her claim with regard to Peru, is not a normal claim, but a *pretium doloris*, the price that she "paid" and continues to pay in exile; and
- i) With regard to the right to life, the life plan of Mrs. Loayza Tamayo has been damaged and the freedom she recovered through the judgment on merits of the Inter-American Court has "little worth", because, to date, the State's conduct prevents her from having even a minimally decent life. Her right to health has also been seriously violated and impaired.

2. The brief of November 29, 2000, received by the Secretariat of the Court on December 11, 2000, in which Mrs. Carolina Loayza Tamayo indicated that "she share[s] the legal

representation of María Elena Loayza Tamayo with Michelangela Scalabrino and Héctor Faúndez Ledezma, at the request of Mrs. Loayza Tamayo”, and declared that she confirmed “each and every one of [the] terms” of the request for provisional measures submitted to the Court on December 5, 2000 (*supra* Having seen 1).

3. The judgments delivered by the Court on September 17, 1997, and November 27, 1998, on merits and on reparations respectively, and its orders of March 8, 1998, on interpretation of judgment, and of November 17, 1999, on compliance with judgment.

4. The letter of November 12, 2000, signed by all the judges of the Inter-American Court and addressed to the Secretary General of the Organization of American States, which indicated, *inter alia*, that the State’s non-compliance “had special effects in the case of Mrs. Loayza Tamayo who, according to reliable information received by the Court, has serious financial and health problems which could be improved, at least in part, by compliance with the respective judgment.” In this note, the Court requested the Secretary General to submit “the [...] communication to the Permanent Council, as soon as possible, and then to the General Assembly of the Organization.”

5. The Order of the President of the Court of December 13, 2000, in which he considered:

[...]

4. That, from these provisions, it is evident that the Court or, when applicable, its President, may act, *de officio*, in cases of extreme gravity and urgency to avoid irreparable damage to persons. The Court has already done so (*cf.* Velásquez Rodríguez, Fairén Garbí and Solís Corrales, and Godínez Cruz cases. Provisional Measures. Order of the Inter-American Court of Human Rights of January 15, 1998. Series E No. 1, fourth and fifth considering clauses). As this Court is not sitting, its President has the authority to adopt urgent measures, *de officio*, in such cases of extreme gravity and urgency to avoid irreparable damage to persons, as he has already done (*cf.* Constitutional Court case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of April 7, 2000. Series E No. 2, fourth considering clause).

5. That Article 1.1 of the Convention indicates the obligation of States Parties to respect the rights and freedoms embodied in it and to ensure their free and full exercise to all persons subject to their jurisdiction.

6. That the Court is authorized to adopt provisional measures in cases of extreme gravity and urgency to avoid irreparable damage to persons (Article 63.2 of the Convention). In this case, with regard to the requested contained in the first “having seen” clause, this implies safeguarding the personal integrity of Mrs. Loayza Tamayo.

7. That the antecedents presented in this case reveal *prima facie* a threat to Mrs. Loayza Tamayo’s integrity. The standard of *prima facie* evaluation of a case and the application of presumptions when there is a need for protection, have led this Court to order provisional measures on various occasions (*cf.*, *inter alia*, Ivcher Bronstein case. Provisional Measures. Order of the Inter-American Court of Human Rights of November 23, 2000, fifth considering clause; Peace Community of San José de Apartadó case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of October 9, 2000, fourth considering clause; Haitians and Dominicans of Haitian Origin in the Dominican Republic case. Provisional Measures. Order of the Inter-American Court of Human Rights of August 18, 2000, fifth and

ninth considering clauses; Constitutional Court case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of April 7, 2000. Series E No. 2, seventh considering clause; Digna Ochoa y Plácido et al. case. Provisional Measures. Order of the Inter-American Court of Human Rights of November 17, 1999. Series E No. 2, fifth considering clause; Cesti Hurtado case. Provisional Measures. Order of the Inter-American Court of Human Rights of June 3, 1999. Series E No. 2, fourth considering clause; James et al. case. Provisional Measures. Order of the Inter-American Court of Human Rights of May 27, 1999. Series E No. 2, eighth considering clause; Clemente Teherán et al. case. Provisional Measures. Order of the Inter-American Court of Human Rights of June 19, 1998. Series E No. 2, fifth considering clause; Alvarez et al. case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of July 22, 1997. Series E No. 2, fifth considering clause; Blake case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of August 16, 1995. Series E No. 1, fourth considering clause; Carpio Nicolle case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of July 26, 1995. Series E No. 1, fourth considering clause; Carpio Nicolle case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of June 4, 1995. Series E No. 1, fifth considering clause; Caballero Delgado and Santana case. Provisional Measures. Order of the Inter-American Court of Human Rights of December 7, 1994. Series E No. 1, third considering clause; and Colotenango case. Provisional Measures. Order of the Inter-American Court of Human Rights of June 22, 1994. Series E No. 1, fifth considering clause).

8. That, in its jurisprudence, this Court has protected witnesses who have testified before the Court by the adoption provisional measures, (cf., inter alia, Bámaca Velásquez case. Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 1998. Series E No. 2; Bámaca Velásquez case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of June 30, 1998. Series E No. 2; Blake case. Provisional Measures. Order of the Inter-American Court of Human Rights of April 18, 1997. Series E No. 2; Blake case. Provisional Measures. Order of the Inter-American Court of Human Rights of September 22, 1995. Series E No. 1; Caballero Delgado and Santana case. Provisional Measures. Order of the Inter-American Court of Human Rights of December 7, 1994. Series E No. 1; Velásquez Rodríguez, Fairén Garbi and Solís Corrales, and Godínez Cruz cases. Provisional Measures. Order of the Inter-American Court of Human Rights of January 15, 1988. Series E No. 1); the adoption of provisional measures is even more justified in the case of a petitioner in a contentious case pending before the Court who affirms that he fears for his personal integrity (cf. Constitutional Court case. Provisional Measures. Order of the Inter-American Court of Human Rights of August 14, 2000, seventh and eighth considering clauses; and Constitutional Court case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of April 7, 2000. Series E No. 2, eighth considering clause).

9. That, on this point, as the Court has already stated, “it is the responsibility of the State to adopt safety measures to protect all persons who are subject to its jurisdiction; this obligation is even more evident in relation to those who are involved in proceedings before the supervisory organs of the American Convention” (cf. Peace Community of San José de Apartadó case. Provisional Measures. Order of the Inter-American Court of Human Rights of November 24, 2000, tenth considering clause; Peace Community of San José de Apartadó case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of October 9, 2000, considering clause octavo; Haitians and Dominicans of Haitian Origin in the Dominican Republic case. Provisional Measures. Order of the Inter-American Court of Human Rights of

August 18, 2000, eleventh considering clause; Constitutional Court case. Provisional Measures. Order of the Inter-American Court of Human Rights of August 14, 2000, ninth considering clause; Constitutional Court case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of April 7, 2000. Series E No. 2, ninth considering clause; and Digna Ochoa y Plácido et al. case. Provisional Measures. Order of the Inter-American Court of Human Rights of November 17, 1999. Series E No. 2, seventh considering clause).

10. That the purpose of provisional measures, in domestic legal systems (domestic procedural law) in general, is to preserve the rights of the parties in dispute, ensuring that the judgment on merits is not prejudiced by their actions *pendente lite*.

11. That the purpose of provisional measures, in international human rights law, goes further, because, in addition to their essentially preventive nature, they must protect fundamental rights effectively, inasmuch as they seek to avoid irreparable damage to persons.

12. That the President believes that it is necessary that the State guarantee to Mrs. Loayza Tamayo the necessary conditions of security for her to be able to return to her country without fear of suffering physical, mental and moral consequences (cf., *inter alia*, Peace Community of San José de Apartadó case. Provisional Measures. Order of the Inter-American Court of Human Rights of November 24, 2000, eighth considering clause and decisions 5 and 6; Haitians and Dominicans of Haitian Origin in the Dominican Republic case. Provisional Measures. Order of the Inter-American Court of Human Rights of August 18, 2000, fourth decision; Alvarez et al. case. Provisional Measures. Order of the Inter-American Court of Human Rights of January 21, 1998. Series E No. 2, fourth decision; Giraldo Cardona case. Provisional Measures. Order of the Inter-American Court of Human Rights of February 5, 1997. Series E No. 2, fifth considering clause; Giraldo Cardona case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of October 28, 1996. Series E No. 2, second decision; and Colotenango case. Provisional Measures. Order of the Inter-American Court of Human Rights of June 22, 1994, second decision).

13. That, according to Article 25.4 of the Rules of Procedure, the President of the Court is authorized only to order the urgent measures necessary to ensure the effectiveness of the Provisional Measures that the Court may adopt at its following session (cf., *inter alia*, Constitutional Court case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of April 7, 2000. Series E No. 2, thirteenth considering clause; Paniagua Morales et al. and Vásquez et al. cases. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of February 10, 1998. Series E No. 2, seventh considering clause; and Cesti Hurtado case. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of July 29, 1997. Series E No. 2, ninth considering clause).

14. That, in this case, the Court delivered the judgments on merits on September 17, 1997, and on reparations on November 27, 1998, and the Order of March 8, 1998, on interpretation of judgment, and maintains jurisdiction for monitoring compliance with the judgment (cf. Loayza Tamayo case. Order of November 17, 1999. Compliance with Judgment. Series C No. 60).

In which he decided:

1. To call on the State to adopt without delay all necessary measures to ensure effectively the return to her country of María Elena Loayza Tamayo and also her physical, mental and moral integrity, so that the provisional measures that the Inter-American Court of Human Rights may decide to order may have the pertinent effects.

2. To call on the State and the Inter-American Commission on Human Rights to provide detailed information at January 12, 2001, at the latest, on the situation of María Elena Loayza Tamayo, so that the Inter-American Court of Human Rights may take an opportune decision in that respect.
3. To call on the State to submit to the Court, by January 12, 2001, at the latest, a report on the measures taken in the light of decision 1 of this Order, so that the Court may be informed at its next session and to continue providing information on these measures every six weeks.
4. To order the Inter-American Commission on Human Rights to submit its comments on the reports provided by the State, within thirty days of their notification.
6. The report of the Inter-American Commission of January 5, 2001, which indicated that:
 - a) With regard to the admissibility and validity of provisional measures, the Commission agrees with the legal principles and adheres to what was requested in the brief of November 30, 2000, submitted by Mrs. Michelangela Scalabrino requesting provisional measures in favor of Mrs. Loayza Tamayo, received by the Secretariat of the Court on December 5, 2000;
 - b) Mrs. Loayza Tamayo has suffered severe physical and mental problems and is currently experiencing a situation of material and spiritual need. This corresponds to the affirmations in the said brief submitted by Mrs. Scalabrino (*supra* Having seen 1), and to the appreciation of members and collaborators of the Fundación de Ayuda Social de Iglesias (FASIC), which has helped her in the Republic of Chile;
 - c) Mrs. Loayza Tamayo “defrays her most urgent financial needs with temporary work in a relation of dependence, and the remuneration is scarcely sufficient to satisfy her basic needs”. Moreover, this type of work is not stable and not always in the same place, so that she must travel from one place to another in the country, with the consequent problems with regard to accommodation, personal relations, and living and working habits, etc; and
 - d) It requests the Court to “address itself to the current Government of Peru and ask it to provide information [...] about the personal bank accounts of former President Alberto Fujimori Fujimori and former adviser, Vladimiro Montesinos”.
7. The reports of Peru submitted on January 12 and 15, 2001, indicating that:
 - a) There is no arrest warrant against Mrs. Loayza Tamayo and there never was one, so that she is free to return to the country when she considers it appropriate; it also expresses its “willingness to grant the said citizen the necessary guarantees and measures that her physical safety, mental health and moral integrity will not be harmed”; and
 - b) Peru “is taking the pertinent measures to comply with the provisions of the judgment issued by the Court” in relation to Mrs. Loayza Tamayo.

CONSIDERING:

1. That Peru has been a State Party to the American Convention since July 28, 1978, and that it recognized the competence of the Court on January 21, 1981.
2. That Article 63.2 of the American Convention provides that, in cases of “extreme gravity and urgency, and when necessary to avoid irreparable damages to persons”, the Court may, in matters submitted to its consideration, take the provisional measures that it considers pertinent.

3. That, in 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 indicates the obligation of the States Parties to respect the rights and freedoms embodied in it and to guarantee their free and full exercise to all persons subject to their jurisdiction.
5. That the Court is authorized to adopt provisional measures in cases of extreme gravity and urgency to avoid irreparable damages to persons (Article 63.2 of the Convention). In this case, with regard to the request contained in “the first having seen paragraph”, this implies safeguarding the personal safety of Mrs. Loayza Tamayo.
6. That the antecedents submitted in this case reveal prima facie a threat to Mrs. Loayza Tamayo’s safety. The standard of prima facie appreciation of a case and the application of presumptions in the face of the need for protection have led this Court to order provisional measures on several occasions¹.
7. That this Court has protected witnesses who have appeared before the Court to give evidence by adopting provisional measures²; with greater reason, the adoption of provisional measures is justified in the case of a petitioner in a contentious case pending before the Court, who affirms that she fears for her personal safety³.
8. That, as this Court has already stated, “it is the responsibility of the State to adopt measures of security to protect all persons who are subject to its jurisdiction; this obligation becomes even more evident in regard to those who are associated with proceedings before the supervisory organs of the American Convention”⁴.
9. That, in international human rights law, the purpose of provisional measures, in addition to their essentially preventive nature, is to effectively protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.
10. That this Court believes the State must guarantee to Mrs. Loayza Tamayo the necessary conditions of security for her to be able to return to the country without fear of suffering negative consequences to her physical safety, mental health and moral integrity⁵.
11. That, in this case, the Court has delivered the judgments on merits of September 17, 1997, and on reparations of November 27, 1999, and the order of March 8, 1998, on the interpretation of judgment, and has jurisdiction to monitor compliance with its judgments⁶.
12. That the Court has examined the facts and circumstances that justified the order of the President of December 13, 2000, which it ratifies as it finds it adjusted to law and to the merits of the case.

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 ratify all the terms of the order of the President of the Inter-American Court of Human Rights of December 13, 2000.
2. To order the State of Peru to maintain any measures necessary to effectively ensure the return to the country of Maria Elena Loayza Tamayo and her physical safety, mental health and moral integrity.
3. To order the State of Peru to inform the Inter-American Court of Human Rights every two months from the notification of this order about the provisional measures that it has adopted in order to comply with it.
4. To order the Inter-American Commission on Human Rights to submit its comments on the reports of the Peruvian State to the Inter-American Court of Human Rights within six weeks of receiving them.

Antônio A. Cançado Trindade
President

Máximo Pacheco Gómez
Hernán Salgado Pesantes
Oliver Jackman
Alirio Abreu Burelli
Sergio García Ramírez
Carlos Vicente de Roux Rengifo

Manuel E. Ventura Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura Robles
Secretary