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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Jorge Carpio Nicolle v. Guatemala
Doc. Type: Order (Provisional Measures)
Decided by: President: Antonio A. Cancado Trindade;
Judges: Hernan Salgado-Pesantes; Oliver Jackman; Alirio Abreu-Burelli;
Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated: 5 September 2001
Citation: Carpio Nicolle v. Guatemala, Order (IACtHR, 5 Sep. 2001)
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HAVING SEEN:

1. The June 4, 1995 Order of the President of the Inter-American Court of Human Rights (hereinafter “the President of the Court”) to the following effect:

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 LOPEZ ARRIVILLAGA, ANGEL ISIDRO GIRON GIRON and ABRAHAM MENDEZ GARCIA, 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.

[...]

2. The September 19, 1995 Order of the Court wherein it confirmed the measures adopted by the President in the Order of June 4, 1995.

3. The Court’s September 19, 1997 Order, to the following effect:

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.

4. The Court's June 19, 2001 Order wherein it resolved, *inter alia*, to reiterate to the State its request that it submit relevant information on the status of case No. 1011-97, and on "the concrete advances made into the investigations of the denounced threats and acts of intimidation."

5. The Court's November 27, 1998 Order wherein it resolved:

1. To declare that the State of Guatemala should take the necessary measures to settle the current and future situation of Karen Fischer de Carpio, in compliance with its obligation to effectively guarantee protection for Mrs. Carpio's life and personal integrity and should include the results of the corresponding measures in its next report.

2. 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.

6. Documents relating to case No. 1011-97, supplied on various dates both by the State of Guatemala (hereinafter "the State" or "Guatemala") and by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), which included August 26, 1997 and December 15, 1997, and January 20, 1998.

7. The June 4, 1999 note from the President of the Court to the Minister of Foreign Affairs of Guatemala, wherein the former requested that the next report specifically supply the following:

a. Detailed information on the proceeding by which the order to set aside case No. 1011-97 was taken;

b. A complete copy of the official public documents in which the said proceeding appears; and

c. Any additional information the State has in its possession that would enable the Court to understand the reasons and justifications for setting aside case No. 1011-97.

8. The Court's September 30, 1999 Order wherein it decided:

1. To maintain the provisional measures adopted by the Court on September 19, 1995, February 1, 1996, September 10, 1996, June 19, 1998 and November 27, 1998, in favor of Marta Elena Arrivillaga de Carpio and Karen Fischer de Carpio.

2. To request the State to continue to report to the Court every two months on the measures that it has taken in this case, and the Inter-American Commission on Human Rights to continue to submit its observations on that information to the Court, within six weeks of receiving it.

3. To request the State of Guatemala to include detailed information on the proceeding by which it adopted the decision to close case N° 1011-97 in its next report, together with all the documentation it holds on this proceeding.

9. The State's thirty-second report, dated October 22, 1999, wherein it reported the following: that case No. 1011-97, assigned to the Fourth Clerk, was instituted as a result of the Order of the President of the Inter-American Court (supra, first paragraph under Having Seen); because no one had been named as a possible suspect in the threats and harassment, the Public Prosecutor's Office, in application of Article 327 of the Code of Criminal Procedure, had asked that the case be set aside on March 6 next. This decision was confirmed by the Sixth Judge of First Instance in Criminal Matters and Drug- and Environment-related Crimes on May 27, 1997, and the special prosecutor for the case on November 27, 1997.

10. The December 9, 1999 letter from the President of the Court wherein he requested the State to include information pertinent to the decision to set aside case No. 1011-97 in its next report, along with the documentation relevant to this proceeding, "as that documentation was not appended to the State's thirty-second report, dated October 22, 1999."

11. The Commission's December 17, 1999 observations on the State's thirty-second report, wherein it forwarded to the Court the comments made by the beneficiaries of the present provisional measures, to the following effect:

[...] the interested [parties] were not notified of the decision to set the case [No. 1011-97] aside and had expressed their dissatisfaction with the inferior investigation conducted by the Public Prosecutor's Office, which 'did not have the capacity to put together a serious investigation aimed at indicting the material and intellectual authors on the crimes reported.' They have underscored the fact that this decision was in violation of the orders of the Inter-American Court, since the latter had instructed the Guatemalan State to conduct an investigation and the State had instead decided to set it aside.

It was also reported that because she was constantly working in defense of human rights and had reported the irregularities in the Carpio case, Karen Fischer de Carpio had fears for her own safety.

12. The State's thirty-third report, dated January 4, 2000, whereby it reported that it was continuing to provide protection to Karen Fischer de Carpio and Marta Arrivillaga de Carpio and forwarded to the Court the very same documents it had supplied in the past (supra 6) in connection with case No. 1011-97; and the Commission's February 29, 2000 observations on that report, wherein it pointed out that the beneficiaries of the provisional measures had received "anonymous, threatening" phone calls and that the documents supplied by the State did not indicate "what measures or proceedings were ordered and/or (sic) carried out to identify a suspect or how the investigation was carried out."

13. The State's March 6, 2000 note enclosing its thirty-fourth report, wherein it advised that security was being provided to the beneficiaries of the provisional measures and that the "Criminal Investigation Service has again been given orders to continue the investigation into the

threats and harassment that [the beneficiaries] claim to have received.” In its April 28, 2000 observations on that report, the Commission underscored the fact that only one agent was protecting Mrs. Fischer and that no detailed information explaining the decision to set aside case No. 1011-97 had been forthcoming.

14. The State’s thirty-fifth report, dated June 1, 2000, wherein it pointed out that the two beneficiaries were being guarded by two agents; however, it made no mention of case No. 1011-97. In its July 21, 2000 observations on this report, the Commission stated that the State had misrepresented the security being provided to the two persons. It pointed out, for example, that no one was policing the perimeter of Marta Arrivillaga de Carpio’s residence since she had moved the year before. It also noted that Karen Fischer de Carpio continued to be the target of telephone intimidation tactics, because of her association with the Carpio Nicolle case. The Commission said again that it was disturbed by the fact that detailed information on case No. 1011-97 was not being provided.

15. The State’s thirty-sixth report, dated September 20, 2000, wherein it repeated the information already provided concerning the security services for the two beneficiaries (supra 13). The State added that the Presidential Coordinating Committee on the Executive’s Human Rights Policy (hereinafter “COPREDEH”) had conferred with the Director General of the National Police about the importance of the State’s reports to the Inter-American Court and about detailing another security agent to Mrs. Fischer. In its November 7, 2000 observations, the Commission pointed out that Karen Fischer de Carpio was having to “pay part of the costs of her personal protection in order to have constant, effective protection, [when it was] the obligation of the Guatemalan State [to pay] the expenses and costs that [her] personal protection involved.” The Commission further stated that no one had been “detailed to guard Mrs. Marta Arrivillaga since early September.” The Commission therefore requested the Court to order the following of the State:

1. Satisfactory, swift and effective compliance with the provisional measures ordered by the Inter-American Court. Accordingly, at least two police officers should be assigned to protect Marta Arrivillaga de Carpio, and an additional police officer to protect Karen Fischer de Carpio.
2. That [... the State] pay the costs and expenses that personal protection services for Marta de Carpio and Karen Fischer de Carpio entailed.

16. The State’s thirty-seventh report, dated November 8, 2000, wherein it again mentions the security measures taken for the beneficiaries. On January 8, 2001, the Secretariat reminded the Commission of its obligation to present observations on that report. On January 31, 2001, the Commission presented its observations and asked that the Court maintain the provisional measures ordered for Marta Arrivillaga de Carpio and Karen Fischer de Carpio. It pointed out that in the case of the former, “contrary to what the Government claims, only one police officer has been detailed to protect her, not two.”

17. On February 9, 2001, the Secretariat asked the State to submit the thirty-eighth report without delay. On March 12, 2001, Guatemala submitted the requested report, wherein it claimed that two police officers were detailed to protect each of the two beneficiaries and that visits and

phone calls had also been made as a way to check on them. In these phone calls and visits Mrs. Marta Arrivillaga de Carpio told COPREDEH that only one person was assigned to protect her.

18. The February 16, 2001 Order of the President which summoned the State and the Commission to a public hearing to be held at the seat of the Court on March 13, to evaluate the facts and circumstances necessitating continuation of the present provisional measures.

19. The public hearing held on March 13, 2001 at the seat of the Court, where the Commission expressed its concern that case No. 1011-97 had been set aside. As for the protective measures taken by the State, the Commission pointed out that the police officers assigned to protect the persons in question had been taken away on a number of occasions. Marta Arrivillaga de Carpio, who has not reported any incidences of intimidation in recent months, had “two police officers guarding her personally, and one [...] at her workplace.” In the case of Karen Fischer de Carpio, it established that “every time she publishes an article in the newspaper about the Carpio Case, she is threatened;” at the present time, only one officer is assigned to protect her, and is on duty for eight hours a day on week days; on weekends, however, she has no protection at all. The Commission therefore requested that the measures be kept in place. It also asked that the State be required to report every 4 months, rather than every 2 months as it does at the present time. Should any emergency arise, the Commission would inform the Court immediately. The State, for its part, had “no objection at all to continuing to provide security measures,” took note of the observations and asked the Court to evaluate the measures being provided after a reasonable amount of time had passed. Finally, during the hearing the Commission submitted a copy of a newspaper article written about some testimony concerning possible suspects in the death of Mr. Carpio.

20. On May 14, 2001, the Secretariat reminded the Commission that it had to present observations on the State’s thirty-eighth report. On May 18, the Commission presented its observations on that report, pointing out that whereas Marta Arrivillaga de Carpio had protection both at her workplace and at home, Mrs. Karen Fischer de Carpio’s safety remained uncertain, as the Commission had reported in its previous observations (supra 16). It went on to report that Karen Fischer de Carpio had received telephone threats.

21. On May 14, 2001, the Secretariat reminded Guatemala that its thirty-ninth report was due and should be sent forthwith. On June 5, the State sent the report, which was a repeat of the previous report (supra 17).

22. On July 20, 2001, the Secretariat requested that the Commission forward its observations on the State’s thirty-ninth report without delay. To date those observations have not been sent.

23. On August 14, 2001, the State submitted its fortieth report, which was basically a duplication of its previous two reports (supra 17 and 21).

24. The Court’s August 29, 2001 order, wherein it decided that:

1. The Court will admit and hear autonomous requests, arguments, and evidence from the beneficiaries of provisional measures which it adopts in cases where the application has been

presented before it; this will, however, not exempt the Commission from its obligation under the Convention to provide the Court, at its request, with all relevant information.

2. Only the Inter-American Commission on Human Rights is authorized to provide information to the Inter-American Court of Human Rights in cases where no application is pending before it.

CONSIDERING:

1. That Guatemala is a State party to the American Convention on Human Rights and, on March 9, 1987, recognized this Court's binding jurisdiction, in accordance with Article 62 of the Convention.

2. That Article 63(2) of the American Convention provides that in cases of "extreme gravity and urgency, and when necessary to avoid irreparable damage to persons," the Court may, at the Commission's request, adopt the provisional measures it deems appropriate in cases not yet submitted to it.

3. That under Article 1(1) of the American Convention, States parties undertake to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms; the State, therefore, is obligated to adopt the measures necessary to preserve the life and personal integrity of any persons whose rights may be threatened. This duty becomes all the more obvious in the case of those persons associated with proceedings before the bodies charged with ensuring observance of the American Convention.

4. That Articles 25(1) and 25(2) of the Court's Rules of Procedure stipulate that::

1. At 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.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

5. That the States Parties to the Convention must fulfill their conventional obligations in good faith, which is a basic principle of the law of the international responsibility of States (*pacta sunt servanda*). They must also guarantee the effects of such provisions (*effet utile*).

6. That by Orders of the Court dated September 19, 1995, February 1, 1996, September 10, 1996, June 19, 1998, November 27, 1998 and September 30, 1999, the State is obligated to undertake the measures of protection and investigation necessary to preserve the life and personal integrity of Marta Arrivillaga de Carpio and Karen Fischer de Carpio on whose behalf the Court ordered provisional measures. The Commission has an obligation to send its observations on the measures taken by the State, within six weeks of receiving the corresponding report.

7. That in the matter of the duty to investigate, the Court has repeatedly held that this duty must be carried out seriously and not as a mere formality destined to be unfruitful.

8. That the State's reports and the Commission's observations reveal differences of opinion between the parties as to the measures actually taken by the State. Similarly, the documents supplied by the parties leave questions that the Court has to settle to decide whether or not the measures it ordered have been carried out.

9. That another essential element of the State's duty to protect is that it must take all measures necessary to resolve the present and future situation of Marta Arrivillaga de Carpio and Karen Fischer de Carpio, in furtherance of its obligation to effectively ensure protection of their lives and personal integrity.

10. That by setting aside case No. 1011-97, the State failed to fulfill its obligation to investigate the threats targeted at Marta Arrivillaga de Carpio and Karen Fischer de Carpio; with that omission, the State is not taking the positive measures necessary to clarify the facts that necessitated these provisional measures.

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

12. That the purpose of provisional measures under international human rights law is more far-reaching: although they are essentially preventive in nature, they also effectively protect fundamental rights in that they seek to avoid irreparable harm to persons.

13. That the State must continue to follow all necessary procedures so that the measures ordered by the Court are planned and carried out with the petitioners' participation, so that those measures are performed diligently and effectively.

14. That *prima facie* "a situation of extreme gravity and urgency" persists that justifies maintaining the provisional measures that the Court called for on behalf of Marta Arrivillaga de Carpio and Karen Fischer de Carpio in its Orders of September 19, 1995, February 1, 1996, September 10, 1996, June 19, 1998, November 27, 1998 and September 30, 1999.

15. That both the Commission and the State are to present their reports and observations within the time frames established for that purpose (*infra*, operative paragraph 2).

NOW, THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to articles 63(2) of the American Convention on Human Rights and Article 25 of the Court's Rules of Procedure

RESOLVES:

1. To call upon the State to maintain the provisional measures ordered by the Court on September 19, 1995, February 1, 1996, September 10, 1996, June 19, 1998, November 27, 1998, and September 30, 1999, on behalf of Marta Elena Arrivillaga de Carpio and Karen Fischer de Carpio.

2. To call upon the State to continue to report to the Court every two months on the measures that it has taken in this case, and to call upon the Inter-American Commission on Human Rights to continue presenting to the Court its observations on the reports that the State files with the Court in this case, within six weeks of receiving those reports.

3. To request the State of Guatemala to include in its next report, detailed information on the security and protection measures being taken for Mrs. Marta Elena Arrivillaga de Carpio and Mrs. Karen Fischer de Carpio and on the measures being taken to investigate the threats made against the two women and what implications the decision to set aside case No. 1011-97 had for these measures.

Antônio A. Cançado Trindade
President

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