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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Colotenango 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: Colotenango v. Guatemala, Order (IACtHR, 5 Sep. 2001)
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HAVING SEEN:

1. The June 22, 1994 Order of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) whereby it resolved:

1. To require the Government of Guatemala to adopt without delay all necessary measures to protect the right to life and the personal integrity of PATRICIA ISPANEL MEDIMILLA, MARCOS GODINEZ PEREZ, NATIVIDAD GODINEZ PEREZ, MARIA SALES LOPEZ, RAMIRO GODINEZ PEREZ, JUAN GODINEZ PEREZ, MIGUEL GODINEZ DOMINGO, ALBERTO GODINEZ, MARIA GARCIA DOMINGO, GONZALO GODINEZ LOPEZ, ARTURO FEDERICO MENDEZ ORTIZ and ALFONSO MORALES JIMENEZ.

2. To request the Government of Guatemala to adopt all necessary measures to ensure that the aforementioned persons may continue to reside at or return to their homes in Colotenango, providing them the assurance that they shall not be persecuted or threatened by agents of the Government or by individuals.
[...]

2. The December 1, 1994 decision of the Court whereby it extended the provisional measures adopted so as to include Mrs. Francisca Sales Martín, and required the State of Guatemala (hereinafter “the State” or “Guatemala”) “to use all the Means at its disposal to enforce the arrest warrants issued against the 13 patrol members charged as suspects in the case before the Second Trial Court of Huehuetenango involving the criminal acts which took place on August 3, 1993, in Colotenango”;

3. The Court’s February 1, 1996 Order which, in addition to the measures already taken, required the State to establish mechanisms to police and control the civil patrols operating in Colotenango;

4. The Court's April 16, 1997 Order in which it directed the State to maintain the provisional measures adopted in the instant case so long as the situations of extreme gravity and urgency that necessitated the adoption of those measures persisted.

5. The Court's September 19, 1997 Order, wherein it resolved:

[...]

2. To call upon the State of Guatemala to expand the measures adopted in this case for the purpose of ensuring the right to life and physical integrity of Andrés Ramos Godínez, Rafael Vásquez Simón, Juan Mendoza Sánchez, Julia Gabriel Simón, Miguel Morales Mendoza, Lucía Quila Colo and Fermina López Castro.

3. To call upon the State of Guatemala to investigate the facts denounced by the Inter-American Commission on Human Rights and punish those responsible.

4. To call upon the State of Guatemala to continue to report every two months on the provisional measures in this case, and, specifically, on any measures it may have taken on behalf of Juan Mendoza Sánchez and Julia Gabriel Simón.

[...]

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

1. Call[ed] upon the State of Guatemala to include detailed information on the protection measures provided to Lucía Quila Colo, Fermina López Castro and Patricia Ispanel Medidilla in its next report.

2. Call[ed] upon the State of Guatemala to include information on the investigation and punishment of those responsible for the facts that led to the adoption of the provisional measures in its next report and, specifically, on the alleged threats to Alberto Godínez and María García Domingo;

7. The Court's June 3, 1999 Order, wherein it:

1. Call[ed] upon the State of Guatemala to continue the measures required to protect the life and safety of the persons on whose behalf the Inter-American Court of Human Rights ordered provisional measures in its decisions of June 22 and December 1, 1994 and September 19, 1997;

2. Call[ed] upon the State of Guatemala to investigate the events that led to the adoption of those provisional measures with a view to ascertaining those responsible and punishing them;

3. Call[ed] upon the State of Guatemala to urgently report on the alternative mechanisms necessitated by the events of April 30, 1999, and adopted in order to carry out effectively the provisional measures ordered by the Inter-American Court of Human Rights;

4. Call[ed] upon the State of Guatemala to involve the claimants in the planning and execution of the measures referred to in the previous paragraph and, in general, to keep them informed of the progress made with the measures ordered by the Inter-American Court of Human Rights.

[...];

8. The Court's February 2, 2000 Order, wherein it decided:

1. To call upon the State of Guatemala to maintain the measures necessary to protect the life and integrity of the persons protected by the orders of the Inter-American Court of Human Rights of June 22 and December 1, 1994 and September 19, 1997.
2. To call upon the State of Guatemala to expand the measures adopted in the instant case in order to ensure the right to life and integrity of Viviana Rucux Quilá.
3. To call upon the State of Guatemala to provide information urgently on the specific measures that are adopted to comply effectively with the provisional measures ordered by the Inter-American Court of Human Rights.
4. To call upon the State of Guatemala to continue allowing the petitioners to take part in the planning and execution of the measures and, in general, to keep them informed about the progress of the measures ordered by the Inter-American Court of Human Rights.
5. To call upon the State of Guatemala to include information on the investigation and punishment of those responsible for the facts that led to the adoption of the provision measures in its next report and also on the status of the investigations into the alleged threats against Francisca Sales Martín, Natividad Pérez, María García Domingo and Alberto Godínez, Marcos, Juan and Ramiro Godínez Pérez, Alfonso Morales Jiménez and Arturo Federico Méndez Ortiz.
6. To call upon the State of Guatemala to include a detailed description of the measures of protection provided to Patricia Ispanel Medimilla and Fermina López Castro and to Gonzalo Godínez López, Arturo Federico Méndez Ortiz and Juan Mendoza.
[...];

General measures: concerning the visits

9. The State's sixteenth, seventeenth, eighteenth, nineteenth and twentieth reports, of February 2, May 3, July 31, and October 19, 2000, and February 19, 2001, respectively, wherein it reported that some of the homes of the persons on whose behalf provisional measures had been ordered were visited in January, March, June, August and September 2000, and that "no incident that [would have disrupted] their routine, daily activities [had been reported]." In its nineteenth report the State also advised that in those cases where it had been unable to speak directly with the persons for whom provisional measures were ordered, close relatives had said that there had been no incident. In its twenty-first report, dated May 18, 2001, the State reported that the persons being protected would shortly be visited. Nevertheless, no document has been received thus far. Finally, in the seventeenth and eighteenth reports, Guatemala reported that it had "been unable to speak personally with Ramiro, Juan and Marco Godínez Pérez [but] [had] learned that they [had] had no problem to date." At the March 13, 2001 public hearing, Guatemala stated that "it [had] no objection to continuing to provide the protective measures it [had] provided thus far," and that it was making its visits in the company of the United Nations Mission for Guatemala (hereinafter "MINUGUA");

10. The Commission's March 22 and September 20, 2000 comments on the sixteenth and eighteenth reports, respectively, wherein it asserted that the visits that National Police officers periodically made to the homes of the persons for whom protective measures had been ordered did not in themselves constitute measures of protection and that the State had not taken the measures necessary to effectively guarantee the life and integrity of the persons for whom the measures were ordered;

Specific measures: concerning the threats

11. The State's seventeenth and eighteenth reports, dated May 3 and July 31, 2001, respectively, conveying information concerning Lucía Quilá Colo, Patricia Ispanel Medinilla and Viviana Rucux Quilá; in its sixteenth report, the State had indicated that Lucía Quilá Colo was a member of the Commission overseeing performance of the "friendly settlement agreements" that the State and the petitioners had concluded. In the seventeenth and eighteenth reports, the State reported that the Civil Police had been asked to take security measures on behalf of the individuals in question and had been issued an injunction ordering it to report the findings of the investigations into the abduction of Viviana Rucux Quilá. In the eighteenth report, Guatemala stated that in the meeting with Lucía Quilá Colo, the latter reported that she had not experienced any incident. In its September 20, 2000 comments on the State's eighteenth report, the Commission pointed out that the State had not taken effective measures to ascertain the identity of those responsible for the abduction of Lucía Quilá Colo and Viviana Rucux Quilá. In its nineteenth, twentieth and twenty-first reports, the State made no reference to the measures of protection being provided for these three people. Finally, in the Commission's brief of August 1, 2001, it reported that the beneficiaries of the provisional measures had been "repeatedly threatened" in the area where most of the fugitive former patrolmen and their families live.

Specific measures: concerning the investigations

12. The State's eighteenth report, dated July 31, 2000, wherein it reported that Alberto Godínez and María García Domingo had in fact been the target of acts of "harassment by persons unknown." Nevertheless, on the last visits made by officials with the Presidential Coordinating Committee for the Executive's Human Rights Policy (hereinafter "COPREDEH"), these officials did not report any threats. The State made no reference to this matter in its nineteenth and twentieth reports. The comments the Commission submitted on March 22, June 29 and September 20, 2000 on the State's sixteenth, seventeenth and eighteenth reports, respectively, wherein it asserted that the State did not report any information pertaining to investigations into the threats and acts of harassment experienced by some of the beneficiaries of the provisional measures ordered, including the incidents reported by Natividad Pérez; the recent acts of intimidation that Alberto Godínez and María García Domingo claim to have experienced; and the criminal proceeding against Colonel Felipe Miranda Trejo, former commander of Military Base 19 at Huehuetenango. In its twenty-first report, the State asserted that while María García Domingo and Alberto Godínez filed a complaint with the Public Prosecutor's Office in Huehuetenango concerning certain incidents, those events were "unrelated[d] to the case for which the provisional measures were ordered." In its commentary on this report, the Commission stated that the individuals in question had been threatened and heard gunfire near their house, which "contradicts the information that the Government provided in its May 18 report" to the effect that the complaints were "unrelated[d] to the case for which the provisional measures were ordered."

13. The State's eighteenth report and the Commission's comments thereon, which make reference to an incident wherein unidentified persons broke into the offices of the Coordinadora Nacional de Viudas de Guatemala (Office of the Coordinator of Guatemalan Widows, hereinafter "CONAVIGUA") on June 2, 2000.

Specific measures: on the situation of the former patrolmen

14. The State's sixteenth and seventeenth reports made no reference to the apprehension of the former patrolmen. The Commission's comments on those reports, submitted on March 22 and June 29, 2000, where it pointed out that twelve former patrolmen were still at large and that "no steps to apprehend" them had been taken. The State's eighteenth report, dated July 31, 2000, wherein it reported on the June 6, 2000 meeting where COPREDEH officials again urged the Director General of National Police that the former patrolmen had to be apprehended. The State also reported that the protective measures were being carried out as "highly covert" operations in order to achieve their objective. In its nineteenth and twentieth reports, the State made no reference to the measures taken in this connection.

15. The Commission's comments on the eighteenth report, the public hearing held on March 13, 2001, and the Commission's comments on the State's twenty-first report, wherein the Commission underscored the urgency of apprehending these persons. In its comments on the twenty-first report, the Commission reported that the beneficiaries of the provisional measures had been threatened by relatives of the former patrolmen. They were told that if the former patrolmen were taken into custody again, the patrolmen's relatives would take reprisals, including possibly poisoning the Colotenango municipal water supply. At that public hearing, the State said that it was working with MINUGUA to map out strategies to apprehend the former patrolmen.

16. The July 19, 2001 note from the Secretariat of the Court (hereinafter "the Secretariat") where it reminded the Commission that it had not submitted comments on the State's nineteenth and twentieth reports.

17. The Secretariat's July 20, 2001 note wherein Guatemala was reminded to submit its twenty-second report. As of the date of this Order, that document had not been received.

18. The Court's August 29, 2001 Decision wherein it determined that it:

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 during the processing of measures ordered by the Court in cases where no application is pending before it.

CONSIDERING:

1. That Guatemala is a State party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and accepted the Court's binding jurisdiction under Article 62 of the American Convention on March 9, 1987.

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, in matters it does not yet have under consideration, adopt the provisional measures it deems pertinent when the Commission so requests.

3. That Article 1(1) of the Convention provides that 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; the State is, therefore, duty-bound to adopt those measures necessary to preserve the life and integrity of any person whose rights may be threatened. This duty is all the more obvious in the case of persons associated with cases filed with bodies charged with ensuring observance of the American Convention.

4. That under Article 25(1) and 25(2) of the Court’s Rules of Procedure:

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 virtue of the Court’s Orders of June 22, 1994, April 16, 1997, September 19, 1997, November 27, 1998, June 3, 1999 and February 2, 2000, the State has an obligation to take the measures of protection necessary to preserve the life and integrity of the beneficiaries of the measures (*supra*, paragraphs 1, 4, 5, 6, 7 and 8 under “Having Seen”). The Commission, for its part, has the duty to send its comments on the measures taken by the State, within six weeks of receiving the corresponding report.

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

8. That this Court has already made clear that it is the State’s duty to supply sufficient information on the measures adopted in the instant case and that the reports submitted by Guatemala, particularly the May 8, 2001 report (*supra*, paragraphs 9 and 11 under *Having Seen*), do not provide sufficient information to allow the Court to draw any conclusions as to the actual circumstances of the beneficiaries of the measures ordered. This creates a situation of uncertainty that is incompatible with the preventive and protective nature of provisional measures. The Court must therefore receive fuller information to determine whether the State is complying with the Court’s orders.

9. That the Commission’s comments describe a situation wherein the safety and integrity of the beneficiaries are in peril, because the former patrolmen are still at large. Some for whom provisional measures were ordered “must live in the same community” alongside these fugitives. No information has been reported concerning any measures taken to recapture them.

10. That conflicting information has been provided in connection with the measures the Guatemalan authorities have taken to investigate the incidents involving some of the beneficiaries of the provisional measures ordered, particularly Alberto Godínez and María García Domingo;

11. That the State has not provided information on the status of the processing of the complaints concerning the acts of intimidation that some of the beneficiaries –including

Francisca Sales Martín, Natividad Pérez and Marcos, Juan and Ramiro Godínez Pérez, Alfonso Morales Jiménez and Arturo Federico Méndez Ortiz- are alleged to have experienced. Nor has the State reported on the progress in the proceedings against Colonel Felipe Miranda Trejo, former commander of Military Base No. 19 at Huehuetenango, or the progress in the investigation into the break-ins at the office of CONAVIGUA.

12. That the State still fails to mention the measures of protection the Court ordered it to provide to Fermina López Castro and Juan Mendoza Sánchez;

13. 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 execution of the eventual judgment on the merits will not be prejudiced by the litigants' actions *pendente lite*;

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

15. That a situation of "extreme gravity and urgency" persists that justifies extending the provisional measures adopted on behalf of the persons protected by the provisional measures ordered in the Court's Orders of June 22 and December 1, 1994, September 19, 1997 and February 2, 2000; and

16. That both the State and the Commission must submit their reports and comments within the time period stipulated for that purpose (*infra* 7),

NOW, THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention and Article 25 of its Rules of Procedure,

RESOLVES:

1. To call upon the State to maintain the provisional measures so as to protect the life and integrity of the persons protected under the Orders of the Inter-American Court of Human Rights of June 22 and December 1, 1994, September 19, 1997 and February 2, 2000.

2. To call upon the State of Guatemala to inform the Inter-American Court of Human Rights of any specific measures adopted to effectively comply with the provisional measures ordered by the Court.

3. To call upon the State of Guatemala to continue to involve the petitioners in the planning and implementation of the measures and, in general, to keep them informed of the progress of the measures ordered by the Inter-American Court of Human Rights.

4. To call upon the State of Guatemala to include in its next report information concerning the investigation and punishment of those responsible for the events that prompted adoption of provisional measures and on the status of the investigations into the threats and acts of intimidation allegedly targeted at Francisca Sales Martín, Natividad Pérez, María García Domingo and Alberto Godínez, Marcos, Juan and Ramiro Godínez Pérez, Alfonso Morales Jiménez and Arturo Federico Méndez Ortiz; information on any progress made in the case against Colonel Felipe Miranda Trejo, former commander of Military Base No. 19 at

Huehuetenango, and information on the progress made in the investigation into the break-ins at the office of the National Coordinator of Widows of Guatemala.

5. To call upon the State of Guatemala to include in its next report detailed information on the measures of protection afforded to Fermina López Castro and Juan Mendoza Sánchez.

7. To call upon the State of Guatemala to continue to submit, every two months, reports on the provisional measures taken, and to call upon the Inter-American Commission on Human Rights to present its comments on those reports within six weeks of receiving them.

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