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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Josue Giraldo Cardona v. Colombia
Doc. Type: Order (Provisional Measures)
Decided by: President: Antonio A. Cancado Trindade;
Judges: Maximo Pacheco-Gomez; Hernan Salgado-Pesantes; Alirio Abreu-Burelli; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated: 3 December 2001
Citation: Giraldo Cardona v. Colombia, Order (IACtHR, 3 Dec. 2001)

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HAVING SEEN:

1. The Order of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) of June 19, 1998, in which it decided:
 1. To lift the provisional measures ordered by the Court in its order of February 5, 1997, in favor of Gonzalo Zárate and to consider them to be at an end.
 2. To require the State of Colombia to adopt such measures as may be necessary to protect the life and personal safety of Sister Noemy Palencia upon her return to El Meta.
 3. To maintain the provisional measures in favor of Islena Rey Rodríguez, Mariela de Giraldo and her two minor daughters, Sara and Natalia Giraldo.
 4. That, as an essential part of its duty to protect, the State must take effective measures to investigate and, where appropriate, punish those responsible for the acts that gave rise to the adoption of the provisional measures.
 5. To call upon the State 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 submit its observations on the reports within six weeks of their receipt.
2. The order of the Inter-American Court of November 27, 1998, in which it decided:
 1. To call upon the State of Colombia to adopt all necessary measures to protect the life and personal integrity of Sister Noemy Palencia on her return to El Meta.
 2. To maintain the provisional measures in favor of Islena Rey Rodríguez, Mariela de Giraldo and her two minor daughters, Sara and Natalia Giraldo.
 3. That the State of Colombia must communicate with the beneficiaries of the provisional measures in order to offer them due, serious, definitive and reliable protection and refer to the result of this measure in its next report.

4. To call upon the State of Colombia to include in its next report, as an essential element of the duty to protect, information on the progress of the investigation into those responsible for the facts that originated the provisional measures, and on the punishment of those responsible for these facts and, if possible, transmit copies of the corresponding proceedings.

3. The order of the Inter-American Court of September 30, 1999, in which it decided:

1. To require the State of Colombia to maintain the measures necessary to protect the life and physical safety of Sister Noemy Palencia (on her return to El Meta), Islena Rey, and Mariela de Giraldo and her two minor daughters, Sara and Natalia Giraldo, in whose favor the Inter-American Court of Human Rights ordered provisional measures in its orders of October 28, 1996, February 5, 1997, June 19 and November 27, 1998.

2. To require the State of Colombia to investigate and inform the Inter-American Court of Human Rights about the facts denounced, which gave rise to these measures, in order to discover those responsible and punish them.

3. To require the State of Colombia to provide information on the alternate mechanisms that will be adopted to execute effectively the provisional measures ordered by the Inter-American Court of Human Rights, as a consequence of the facts described in the Commission's briefs of September 3 and 15, 1999, and the State's brief of September 17, 1999, and on the efforts made to reopen the El Meta Human Rights Civic Committee.

4. To require the State of Colombia to continue allowing the petitioners to participate in the planning and implementation of the measures referred to in the previous point and, in general, maintain them informed on the progress of the measures ordered by the Inter-American Court of Human Rights.

5. To require the State of Colombia to continue presenting reports every two months on the provisional measures it has taken and the Inter-American Commission on Human Rights to submit its observations on the reports within six weeks of their receipt.

4. The brief of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of June 6, 2001, in which it stated that on:

June 5, 2001, Gonzalo Zárate Triana, who was protected by the provisional measures called for in the order of October 28, 1996, in the Giraldo Cardona et al. case, had been assassinated.

The Commission then requested the Court to communicate with the Republic of Colombia (hereinafter "the State" or "Colombia") "to request the judicial authorities to conduct the corresponding investigation in order to clarify the facts and prosecute those responsible."

5. The brief of the Secretariat of the Court (hereinafter "the Secretariat") of June 6, 2001, with which it sent the State a copy of the Commission's brief of the same date (supra 4) and, following the instructions of the President of the Court, Antônio A. Cançado Trindade, requested "that in the next report on compliance with the provisional measures ordered by the Court in this case, it submit information on the facts referred to and on the investigations that the State is conducting in order to clarify them and punish those responsible."

6. The Commission's observations of July 10, 2001, on the twenty-fifth report of the State, in which the Commission stated that:

[...] the assassination of Mr. Zárate and his brother confirms the critical situation of human rights defenders in the region of El Meta. Although Mr. Zárate waived the security plan suggested by the State and, as the petitioners indicate, voluntarily isolated himself from public activity as a way of protecting his life and that of this family, the absence of effective actions to investigate the origin of the threats and violence against the members of the El Meta Human Rights Committee and combat the agents who generated the violence in Villavicencio finally cost him his life.

[...] the customary security plans offered [by] the State should include the option that those who carry out risk studies and other activities intended to ensure the safety and security of the persons protected by the measures do not belong to the regional security organizations, of the Department of El Meta in this case, so that they are acceptable to the persons who have been threatened.

7. The Commission's petition, included with these observations, in which it asks the Court "to request the State to submit comprehensive information on [...] [t]he measures adopted to investigate the assassination of Gonzalo and Humberto Zárate Triana and to prosecute and punish the perpetrators and those who planned it."

8. The twenty-sixth report of the State, of June 15, 2001, in which it indicated that:

[T]he Office of the Eighth Deputy Prosecutor before the Criminal Circuit Judges of the Villavicencio Life and Personal Safety Unit is conducting the preliminary investigation, under file No. 49228, into the crime of the homicide of the brothers Gonzalo and Humberto Zárate Triana, during acts that occurred in the district of Manantial in Villavicencio on June 5 this year.

9. The Commission's observations of August 17, 2001, on the State's twenty-sixth report (supra 8), in which it states that:

There is no further information on specific measures aimed at establishing the identity of those responsible and including them in the investigation.

The petitioners have reiterated [...] their concern about the way in which the judicial authorities treated the next of kin of the victims, searched their home without giving any explanation and removed documents and personal effects. Apparently, the investigation focused on the home of the victims and was not expanded to the surrounding areas, by which the perpetrators entered and escaped. The petitioners consider that the manner of the procedure to remove the corpse and the interrogations, far from offering evidence of the authorities' legitimate interest in clarifying the assassinations, was extremely intimidating for the next of kin of Gonzalo Zárate and his brother Humberto.

10. The Commission's petition, included with these observations, in which it requested the Court to order the State to "[a]dopt effective measures to investigate the assassination of Gonzalo and Humberto Zárate Triana and prosecute and punish the perpetrators and those who planned it."

11. The State's twenty-seventh report of August 13, 2001, in which it indicated that:

in communication number DH1605 of June 20 this year, the Presidential Human Rights and International Humanitarian Law Program of the Vice Presidency of the Republic requested the National Director of Prosecutors Offices of the Office of the Prosecutor General that the investigation being conducted by the Office of the Eighth Prosecutor before the Criminal Circuit Judges of the Villavicencio Life and Personal Safety Unit for the homicide of Gonzalo Zárate Triana and Humberto Zárate Triana, in the course of acts that occurred on June 5 this year, in the Manantial district of the city of Villavicencio, should be assumed by the National Human Rights Unit of the Office of the Prosecutor General.

12. The Commission's observations of October 9, 2001, on the twenty-seventh report of the State (supra 11), in which it indicates that, although four months have passed since the request for the transfer of the investigation to the National Human Rights Unit of the Office of the Prosecutor General, no information had been provided on whether that transfer had been carried out and that "the State had failed to present information on the irregular way in which the body was removed by the judicial authorities."

13. The Commission's petition, included with these observations, in which it requested the Court to order the State to provide information on "[t]he measures adopted to investigate the assassination of Gonzalo and Humberto Zárate Triana and to prosecute and punish the perpetrators and those who planned it."

14. The State's twenty-eighth report of October 12, 2001, in which it stated the following with regard to the situation of Gonzalo Zárate:

He was absent from Villavicencio at the beginning of 1997 and the National Police had no information on Mr. Zárate's activities and place of residence. In June 1997, the National Police carried out a risk analysis and a study of the threats to Mr. Zárate. The National Police provided further information in official communication No. 209 of September 5, 1997, signed by the deputy chief of the SIJIN, in which he offers to provide personal security services to Gonzalo Zárate, who, in official communication No. 18 of September 14, 1997, stated that he did not require the security services for personal and work-related reasons and that, should he require such services or be aware of any anomaly that might represent a threat to his life, he would provide information immediately, and also if he continued to work in the sphere of human rights.

15. The Commission's observations of December 1, 2001, on the State's twenty-eighth report (supra 14) in which it requested the Court to order the State to provide extensive information on "[t]he measures adopted to investigate the assassination of Gonzalo and Humberto Zárate Triana and to prosecute and punish the perpetrators and those who planned it."

CONSIDERING:

1. That, in accordance with the order of the Court of June 19, 1998 (supra Having seen 1), as of that date, the Court decided to lift the provisional measures in favor of Gonzalo Zárate

Triana called for by the Court in its order of February 5, 1997, and to consider them to be at an end.

2. That, with the lifting of the provisional measures that were in force in favor of Gonzalo Zárate Triana, the State's obligation to inform the Court on the facts relating to this case ceased.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

DECIDES:

1. To call on the State and the Inter-American Commission to cease transmitting information with regard to Gonzalo Zárate Triana, in whose favor the Inter-American Court of Human Rights ordered provisional measures on February 5, 1997, and lifted them on June 19, 1998.

2. To call on the State of Colombia to continue submitting its reports on the provisional measures taken in favor of the persons protected in this case every two months and on the Inter-American Commission on Human Rights to present its observations on these reports within six weeks of receiving them.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Hernán Salgado-Pesantes
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