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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Jose Francisco Gallardo Rodriguez v. Mexico
Doc. Type: Order (Provisional Measures)
Decided by: President: Antonio A. Cancado Trindade
Dated: 14 February 2002
Citation: Gallardo v. Mexico, Order (IACtHR, 14 Feb. 2002)

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HAVING SEEN:

1. The brief of the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) of December 18, 2001, in which it submitted a request for provisional measures:

to avoid irreparable damage to the life, and the physical, psychological and moral well-being of General José Francisco Gallardo Rodríguez, and also to his freedom of expression related to his life. The provisional measures are also requested to avoid irreparable damage to the psychological and moral well-being of his wife, Leticia Enríquez, and his children, Marco Vinicio, Francisco José, Alejandro and Jessica Gallardo Enríquez. In the case of his daughter, Jessica Gallardo, who is eight years of age, the Court is also requested to adopt special protection measures to safeguard her safety. Lastly, the purpose of the measures is to avoid irreparable damage to the right of Mexican society as a whole to receive information freely.

In its request, the Commission indicated that:

- a) The safety and life of General José Francisco Gallardo Rodríguez (hereinafter “General Gallardo” or “the General”) were in grave danger; the General was “detained de facto” in the “Nezahualcoyotl-Bordo Xochiaca” Social Rehabilitation Center in the State of Mexico (Neza-Bordo prison);
- b) The Inter-American Commission and the United Nations Working Group on Arbitrary Detention had studied this case and concluded that the detention was illegal, because it was the result of “arbitrary military procedures” that violated due process;
- c) The State, through the Ministry of Foreign Affairs, assumed the legal commitment to free the “de facto prisoner”;
- d) In the place where he was detained, General Gallardo was submitted to numerous acts of harassment, because the prison authorities had denied him the right to receive visits on several occasions, in an apparently arbitrary manner, and he had been subjected to sudden transfers without any explanation;
- e) General Gallardo’s right to life is threatened by his “de facto detention”;

f) The continued de facto detention of General José Francisco Gallardo Rodríguez did not permit safeguarding his life and physical well-being, or that of the members of his family. In these conditions, the liberation of General Gallardo is a sine qua non condition to avoid the occurrence of the irreparable damage that threatens them;

g) The “de facto imprisonment” of General Gallardo entails irreparable damage for his wife, Leticia Enríquez, and his children, Marco Vinicio, Francisco José, Alejandro and Jessica Gallardo Enríquez;

h) The United Mexican States should adopt measures to protect the life and safety of General Gallardo and the members of his family, and, following his liberation, these measures should be applied immediately;

i) The “de facto detention” of General Gallardo also generated irreparable damage to his freedom of expression in relation to his life. Indeed, the General’s “de facto imprisonment” prevented him from fully expounding his version of the campaign of harassment to which he has been subjected and freely expressing his opinions about the acts which he considers constitute an abuse of authority within the Mexican army; and

j) Mexican society was deprived of full access to General Gallardo’s perception of his case and his claims of abuse by the Mexican armed forces, with irreparable consequences to the right to freedom of expression of the Mexican population.

2. The order of the President of the Court (hereinafter “the President”) of December 20, 2001, after having consulted all the judges of the Court, which considered it “necessary to hear at a public hearing the arguments [of the United Mexican States (hereinafter “the State” or “Mexico”)] and of the Commission with regard to the [...] request, and also the statements of the witnesses and the reports of the expert witnesses. The witnesses and the expert witnesses will be summoned when the Commission forwards the final list”, and decided:

1. To call on the State to adopt forthwith all necessary measures to protect the life and safety of General José Francisco Gallardo Rodríguez.

2. To call on the State to inform the Inter-American Court of Human Rights by January 14, 2002, at the latest, about the measures it has adopted to comply with this order.

3. To call on the Inter-American Commission on Human Rights to submit any pertinent comments to the Inter-American Court of Human Rights within 10 days of receiving notification of the State’s report.

4. To summon the Inter-American Commission on Human Rights and the United Mexican States to a public hearing at the seat of the Inter-American Court of Human Rights on February 18, 2002, at 3 p.m., so that the Court may hear their points of view on the facts and circumstances that gave rise to the request for provisional measures.

3. The order of the President of the Court of January 23, 2002, in which he decided:

1. To summon the Inter-American Commission on Human Rights and the United Mexican States to a public hearing to be held at the seat of the Inter-American Court of Human Rights on February 19, 2002, at 10 a.m., so that the Court may hear their arguments on the facts and circumstances that gave rise to the request for provisional measures, and to receive the statements of the proposed witnesses and the reports of the expert witnesses.

Witnesses proposed by the Inter-American Commission:

1. Marco Vinicio Gallardo Enríquez

He will make a statement on the “extreme gravity and urgency of the situation of General Gallardo and his family, and about the irreparable nature of the damage.”

2. Homero Aridjis

He will make a statement on the “extreme gravity and urgency of the situation, and particularly on the right of General Gallardo and the population of Mexico to seek, receive and disseminate information and opinions about the case.”

3. Diego Zavala

He will make a statement on the “extreme gravity and urgency of the situation, and particularly on the right of General Gallardo and the population of Mexico to seek, receive and disseminate information and opinions about the case.”

Expert witnesses proposed by the Inter-American Commission:

1. Jorge de la Peña Martínez

He will refer to the “irreparable damage to the psychological and moral well-being of Jessica Gallardo Enríquez and the other members of the Gallardo family.”

2. Miguel Sarre

He will refer to the “extreme gravity and urgency of the case of General Gallardo and the members of his family, and the irreparable nature of the damage, in the context of the Mexican legal and penitentiary system.”

2. To request the United Mexican States to facilitate the departure from and entry into its territory of all the witnesses and expert witnesses who reside there and who have been summoned by the President of the Court to give testimony or an expert report by means of this order.

3. That this summons shall be governed by the terms of Article 45 of the Court’s Rules of Procedure, in accordance with which, any party requesting the production of an item of evidence shall cover its cost.

4. The brief of February 8, 2002, in which the United Mexican States advised that “the President of the Republic, Vicente Fox Quesada, issued a decree addressed to the Ministry of National Defense granting a reduction of the sentence that Mr. Gallardo Rodríguez was serving,” and that in “compliance with the said Presidential decree [...], the General Directorate of Military Justice requested the penitentiary authorities of the State of Mexico to liberate José Francisco Gallardo,” who has now been liberated and “is protected 24 hours a day by an escort.”

5. The brief of February 12, 2002, in which the Commission advised the Court of General Gallardo’s liberation and, with regard to its previous requests, indicated that:

[t]he circumstances that gave rise to [those requests] have varied substantially[; that] it t[ook] into account, in particular, the liberation of General Gallardo and the security measures [that the Special Immediate Reaction Unit of the Office of the Attorney General of Mexico, D.F., is granting to Mr. José Francisco Gallardo Rodríguez and the members of his family,] and decide[d] to withdraw its request for provisional measures in this case. At the same time, [the Commission] request[ed ...] the Inter-American Court to cancel the public hearing called for February 19, 2002.

6. The brief of February 12, 2002, in which the State stated that “it fully agreed with all the terms of the position expressed by the Inter-American Commission in its note of February 12, 2002”.

CONSIDERING:

1. That Mexico ratified the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) on March 24, 1981, and, pursuant to Article 62 of the Convention, accepted the contentious jurisdiction of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) on December 16, 1998.

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”, at the request of the Commission, the Court may order such provisional measures as it deems pertinent in the matters it has under consideration.

3. That, in the terms of Article 25(1) of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure”):

[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, in the terms of Article 25(4) of the Rules of Procedure, “[i]f the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures that may be ordered by the Court at its next session.”

5. That, in international human rights law, provisional measures have not only a preventive nature, in the sense that they preserve a juridical situation, but are fundamentally protective, because they protect human rights. Provided that the basic requires of extreme gravity and urgency and the prevention of irreparable damage to persons are present, provisional measures of protection become a real jurisdictional guarantee of a preventive nature, by seeking to avoid irreparable damage to persons.

6. That the President considers that, although José Francisco Gallardo is free, his life and safety could be at risk, so that it is necessary to maintain the urgent measures adopted by the President (supra second “having seen” paragraph), which ordered the State to adopt all necessary measures to avoid irreparable damage to José Francisco Gallardo.

7. That it is the State’s responsibility to adopt security measures to protect all persons subject to its jurisdiction. This obligation is even more apparent in relation to those involved in cases before the supervisory organs of the American Convention.

8. That, with regard to the public hearing called for February 19, 2002, the President accepts the Commission’s request – to which the State has agreed – to cancel this hearing.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the powers granted to him by Article 63(2) of the American Convention on Human Rights, Article 25(2) of the Statute of the Court, and Articles 4, 25 and 29(2) of the Rules of Procedure of the Court, and having consulted all the judges of the Court,

DECIDES:

1. To maintain the urgent measures adopted by the order of December 20, 2001, “[r]equiring the State to adopt forthwith all necessary measures to protect the life and safety of General José Francisco Gallardo Rodríguez.”

2. To accept the request of the Inter-American Commission on Human Rights, with which the United Mexican States is in agreement, to cancel the public hearing that had been requested and that was convened by the orders of December 20, 2001, and January 23, 2002.

Antônio A. Cançado Trindade
President

Manuel E. Ventura Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura Robles
Secretary