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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Jose Francisco Gallardo Rodriguez v. Mexico
Doc. Type: Order
Decided by: President: Antonio A. Cancado Trindade;
Judges: Alirio Abreu-Burelli; Hernan Salgado-Pesantes; Oliver Jackman;
Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated: 18 February 2002
Citation: Gallardo v. Mexico, Order (IACtHR, 18 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 (hereinafter "the State" or "Mexico") 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; and

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.

2. The order of the President of the Inter-American Court of Human Rights (hereinafter "the President") of December 20, 2001, issued after having consulted all the judges of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), in which he considered it "necessary to hear at a public hearing the arguments [of the State] and of the Commission with regard to the [...] request, and also the statements of the witnesses and the reports of the expert witnesses; 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 the [...] 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 witnesses and the reports of the expert witnesses who had been proposed.

[...]

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 resolution 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 Resolution [...] 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 by an escort composed of agents of the Ministry of Public Security and the Federal Preventive Police.”

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

7. The order of the President of February 14, 2002, in which he decided:

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.

8. The brief of February 15, 2002, with which Commission forwarded copy of a communication it had received from General Gallardo Rodríguez, the Mexican Commission for the Defense and Promotion of Human Rights, and the Center for Justice and International Law. This note indicated, inter alia, that:

in view of the fact that General Gallardo has been subjected to threats, and that the members of his family have been the victims of harassment, facts that the Commission is been aware of and which remain unpunished, the petitioners continue to fear for the life and safety of both General Gallardo and his wife and children.

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 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, although General Gallardo has been liberated, his life and safety could be at risk, as he and his representatives have indicated (supra eighth “having seen” paragraph), and it is therefore necessary to maintain the urgent measures adopted by the President (supra second “having seen” paragraph), which call on the State to adopt all necessary measures to avoid irreparable damage to General Gallardo.
5. That, in view of the foregoing, the Court considers that, as a provisional measure, the arrangements decided by the President in his orders of December 20, 2001, and February 14, 2002 (supra second and seventh “having seen” paragraph) should be maintained; and that the Court ratifies them entirely.
6. 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.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the powers granted to 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 orders of the President of the Inter-American Court of Human Rights of December 20, 2001, and February 14, 2002, and, consequently, to call on the State to maintain all necessary measures to protect the life and safety of General José Francisco Gallardo Rodríguez, without detriment to any other measures that it might be pertinent to establish, in the terms of the sixth considering clause of this order.
2. To call on the State to inform the Inter-American Court of Human Rights about the measures that it has adopted in compliance with this order within 15 days of its notification.
3. To call on the State to continue informing the Inter-American Court of Human Rights about the provisional measures that it has adopted every two months, and on the Inter-American

Commission on Human Rights to submit its comments on these reports and on the one referred to in the preceding operative paragraph, within six weeks of receiving it.

Antônio A. Cançado Trindade
President

Alirio Abreu-Burelli
Hernán Salgado-Pesantes
Oliver Jackman
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