

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Efraín Bamaca Velasquez v. Guatemala
Doc. Type: Order (Provisional Measures)
Decided by: President: Antonio A. Cancado Trindade;
Judges: Sergio Garcia-Ramirez; Hernan Salgado-Pesantes; Oliver Jackman;
Alirio Abreu-Burelli
Dated: 21 February 2003
Citation: Bamaca Velasquez v. Guatemala, Order (IACtHR, 21 Feb. 2003)
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HAVING SEEN:

1. The September 12, 2002 brief filed by the Center for Justice and International Law (CEJIL) (hereinafter “the representatives of the victims” or “the representatives”) in which they reported “on the situation of risk and fear suffered by Efraín Bámaca’s family,” regarding compliance with the judgment in the Bámaca Velásquez case because “recent facts have reactivated fear in Alberta Velásquez’s family; [who] fear that murder and disappearance will happen to them once again to the detriment of their relatives.”

2. The December 13, 2002 brief filed by the representatives of the victims, in which they submitted to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and 25(1) of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), a request for Provisional Measures in favor of the members of the Bámaca Velásquez family. In said brief, the representatives of the victims made the following requests of the Court:

1. That once it has studied the facts reported in the instant document, the [...] Court decide to adopt such measures as it may deem necessary to ensure the physical safety of the members of the Bámaca Velásquez family.

2. That if it so deems, it order the State of Guatemala to adopt urgent measures to ensure immediate protection of the members of the Bámaca Velásquez family recognized in the February 22, 2002 judgment on reparations, as well as their children and close relatives.

3. The grounds for the request for Provisional Measures (supra Having Seen 2) by the representatives of the victims, based on the following facts:

a. that on September 11, 2002 CEJIL sent “a brief reporting on certain facts that demonstrated acts against Alberta Velásquez –a sister of Efraín Bámaca Velásquez- and her

family, and with respect to whom the presence of several armed men was reported close to her home, asking insistently for her older son, Rudy López Velásquez,” which forced Alberta Velásquez to abandon her home together with her family;

b. that on “December 11, 2002, during the morning, 6 armed men, wearing ski masks, came to Egidia [Bámaca]’s home[...], and after beating her and threatening to kill her they searched her house seeking (according to the sign they made to each other, rubbing the thumb and index finger of their right hand) cash.” Also, “[t]wo of them had knives such as ‘cuta’ type machetes [...] and four more had firearms, apparently high caliber;”

c. that “[a]ccording to the information received by CEJIL, the blows received by Egidia [Bámaca] were given with the side of the machete and the palm of their hands, she defended herself with a board on which the machete blows fell. Due to this [...] the physical damage was not too grave;”

d. that “[a]fter completely disarranging [Egidia Bámaca]’s house, searching under the mattresses and within the chests (small wooden boxes where clothes and valuable objects are kept) the aggressors did not take any of their belongings;”

e. that due to the above, “the woman [Egidia Bámaca] and her family, as well as José León [Bámaca] are not in their customary place of residence,” and

f. the representatives of the victims deem that “these facts merit immediate and extensive investigation by the Guatemalan judicial authorities, since the aggressors apparently were seeking cash in Edigidia [Bámaca]’s home, until the investigation moves forward it is not possible to discount the involvement of a member linked to the State security forces who intend to continue carrying out acts of repression against the Bámaca family.”

4. The annex to the request for Provisional Measures filed by the representatives (supra Having Seen 2) in which they submitted a request by Mrs. Jennifer Harbury stating that “[o]f [her] three sisters in law, each of the three ha[d] recently suffered intimidation [and] [a]lso a group of armed and masked men ha[d] badly beaten Egidia Bámaca[;]” that Alberta Velásquez’s family received messages from neighbors saying that armed persons were searching and inquiring for her husband and son [and that] they heard strangers on the street commenting on possible acts of violence against ‘the Bámaca family’ [for which reason] Alberta [Velásquez]’s children stopped going to school, and they all stayed locked up in their house until [November], when they were able to move to another place” and that Josefina Bámaca Velásquez “fled to her house on the farm called El Tablero, because armed men entered her [...] home [and] it was obvious that they wanted to steal, and that they were looking for something.”

5. The December 20, 2002 Order of the President of the Court (hereinafter “the President”) in which he decided:

1. To order the State to adopt, forthwith, such measures as may be necessary to protect the life and the right to humane treatment of José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, Alberta Velásquez, Rudy López Velásquez and the other members of the Bámaca Velásquez family who live permanently in Guatemala.

2. To order the State to allow the representatives of the victims to participate in planning and implementation of the protection measures and, in general, to inform them of progress regarding the urgent measures ordered by the President of the Inter-American Court of Human Rights.

3. To order the State to investigate the claims that gave rise to the instant measures with the aim of discovering and punishing those responsible.
4. To order the State to report to the Inter-American Court of Human Rights on the measures taken to comply with the instant Order, no later than January 10, 2003, for the Inter-American Court of Human Rights to decide on the matter at the appropriate time.
5. To require the representatives of the victims to submit their observations to the report by the State within a week of the date when it was received, and the Inter-American Commission on Human Rights to submit its observations within two weeks of the date when it receives the report by the State.
6. The December 20, 2002 brief by the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) in which it submitted its observations on the twenty-first report by the State on Provisional Measures and referred to “the situation of risk and fear suffered by part of Efraín Bámaca’s family” and was “especially concerned by the facts stated that have seriously affected not only the ease of mind but also the physical and emotional well-being of the next of kin of Mr. Bámaca Velásquez, who for reasons of safety have had to leave their usual place of residence.”
7. The January 14, 2003 brief by the Secretariat of the Court in which it asked the State to send the report on urgent measures adopted by the State of Guatemala in compliance with the December 20, 2002 Order of the President of the Inter-American Court of Human Rights (supra Having Seen 5).

CONSIDERING:

1. Guatemala ratified the American Convention on May 25, 1978 and, pursuant to Article 62 of that Convention, it accepted contentious jurisdiction of the Court on March 9, 1987.
2. Pursuant to Article 25(1) of the Rules of Procedure of the Court, [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.
[...]
3. The Court is empowered to adopt Provisional Measures in cases of extreme gravity and urgency to avoid irreparable damage to persons (Article 63(2) of the Convention). This involves protection of the right to humane treatment of the next of kin of Efraín Bámaca Velásquez.
4. The request for Provisional Measures described a situation of extreme gravity and urgency, consistent with the conditions set forth in Articles 25(1) of the Rules of Procedure of the Court and 63(2) of the American Convention on Human Rights.
5. Article 1(1) of the Convention sets forth the duty of the States Party to respect the rights and liberties recognized therein and to ensure their free and full exercise by all persons under their jurisdiction.
6. In its August 29, 2001 Order, the Court decided:
 1. The Court will receive and independently hear the requests, arguments and evidence by the beneficiaries of the provisional measures it has adopted in cases in which an application has been filed before the Court, without this releasing the Commission of its duty,

within the framework of its obligations under the Convention, of reporting to the Court, when the latter so requests.

2. Only the Inter-American Commission on Human Rights may provide information to the Inter-American Court of Human Rights on the processing of measures the latter has ordered and when no application has been filed before the latter.

7. The purpose of Provisional Measures, in the national legal systems (domestic procedural law) in general, is to protect the rights of the parties to a dispute, ensuring that the judgment on the merits does not suffer detriment due to actions by the parties *pendente lite*.

8. The purpose of urgent and provisional measures, in International Human Rights Law, goes further as, in addition to their essentially preventive nature, they effectively protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.

9. The instant *Bámaca Velásquez vs. Guatemala* case is being heard by the Court in the stage of compliance with judgment and, therefore, pursuant to the August 29, 2001 Order of the Court (*supra* Considering six), the representatives of the victims have *locus standi* to submit their requests directly to the Court.

10. Urgent and provisional measures may also be applied during the stage in which the Court oversees compliance with its judgments, insofar as the information submitted to the Court demonstrates *prima facie* the existence of a situation of extreme gravity and urgency and imminence of irreparable damage to persons.

11. The Inter-American Court stated, in its judgment on the merits in the instant case, that “the next of kin of the victims of human rights violations may, in turn, become victims;” and it established that:

[t]he Court also considers that ignorance of the whereabouts of Bámaca Velásquez caused his next of kin the profound anguish mentioned by the Commission and, therefore, considers that they, too, are victims of the violation of [...] Articles [5(1) and 5(2) of the Convention]. *Bámaca Velásquez Case*. November 25, 2000 Judgment. Series C., No. 70, para. 165.]

12. The Court also deemed, in its judgment on reparations in the instant case, that: [i]n view of the fact that the violations of the American Convention determined by the Court in its November 25, 2000 Judgment were committed against Efraín Bámaca Velásquez, Jennifer Harbury, José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, and Josefina Bámaca Velásquez, all of them –as victims- must be included in that category and be entitled to the reparations decided by the Court, both in connection with material damages, when appropriate, and in connection with non-material damages. [*Bámaca Velásquez Case*. Reparations (Art. 63(1) American Convention on Human Rights). February 22, 2002 Judgment. Series C No. 91, para. 30.]

13. The background information submitted in this case reveals *prima facie* a threat to the right to humane treatment of the next of kin of Efraín Bámaca Velásquez who live permanently in Guatemala. The standard for *prima facie* assessment of a case and application of presumptions with respect to protection needs, has led the Court to adopt Provisional Measures various times.

14. In this respect, as the Court has stated, “it is the responsibility of the State to adopt security measures to protect all persons under its jurisdiction; this duty is even more evident with respect to those involved in proceedings before the oversight bodies of the American Convention” .

15. The Inter-American Court deems it necessary for the State to guarantee for José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, Alberta Velásquez, Rudy López Velásquez and the other members of the Bámaca Velásquez family the

safety conditions required for them to be able to continue living in their usual place of residence without fear of suffering damage to their physical, psychological and moral well-being.

16. In the instant case, the Court has issued the Judgments on Preliminary Objections, of April 16, 1997; on the Merits, of November 25, 2000; and on Reparations, of February 22, 2002, and maintains its jurisdiction to oversee compliance with the Judgment.

17. The Court has examined the facts and circumstances that were the basis for the December 20, 2002 Order of the President, which it ratifies as it deems it to be in conformity with the law and the merits in the proceedings.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

by virtue of the authority 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, in its entirety, the December 20, 2002 Order of the President of the Inter-American Court of Human Rights.
2. To order the State of Guatemala to adopt, forthwith, such measures as may be required to protect the life and the right to humane treatment of José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, Alberta Velásquez, Rudy López Velásquez and the other members of the Bámaca Velásquez family who live permanently in Guatemala.
3. To order the State of Guatemala to adopt, forthwith, such measures as may be required to ensure that the beneficiaries of the instant measures can continue to live in their usual place of residence.
4. To order the State to allow the representatives of the victims to participate in planning and implementation of the protection measures and, in general, to inform them of progress regarding the Provisional Measures ordered by the Inter-American Court of Human Rights.
5. To order the State to investigate the facts stated in the complaint that gave rise to the instant measures with the aim of discovering and punishing those responsible.
6. To order the State to report to the Inter-American Court of Human Rights on the measures adopted to comply with the instant Order no later than March 10, 2003.
7. To require the representatives of the victims to submit their comments on the report by the State within a week of having received it, and the Inter-American Commission on Human Rights to submit its observations within two weeks of being notified of the report filed by the State.
8. To order the State, subsequent to its first report (*supra* operative paragraph six), to continue reporting to the Inter-American Court of Human Rights, every two months, on the Provisional Measures adopted, and to require the representatives of the victims to submit their comments on said reports by the State within four weeks of when they received them, and the Inter-American Commission on Human Rights to submit its observations within six weeks of when it received notice of the respective reports filed by the State.

Antônio A. Cançado Trindade

President

Sergio García-Ramírez
Hernán Salgado-Pesantes
Oliver Jackman
Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary