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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Myrna Mack Chang v. Guatemala
Doc. Type: Order (Expansion of 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: Mack Chang v. Guatemala, Order (IACtHR, 21 Feb. 2003)
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HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter “the President”) of August 14, 2002, in which he decided:

1. To order the State to adopt without delay whatever measures are required to protect the life and safety of Helen Mack Chang and of the members of the Myrna Mack Foundation (FMM).
2. To order the State to allow the applicants to take part in planning and implementing the measures and, in general, to keep them informed of progress regarding the measures ordered by the Inter-American Court of Human Rights.
3. To order the State to investigate the facts stated in the complaint that gave rise to these 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 adopted to comply with this Order no later than August 22, 2002.
5. To order the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights any observations it deems appropriate, within one week of receiving the report submitted by the State.

2. The Order of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) of August 26, 2002, in which it decided:

1. To ratify the Order of the President of the Inter-American Court of August 14, 2002, to its full extent.
2. To order the State to adopt forthwith, all necessary measures to protect the life and safety of Helen Mack Chang, Viviana Salvatierra, América Morales Ruiz, Luis Roberto Romero Rivera and of the other members of the Myrna Mack Foundation.

3. To order the State to allow the applicants to participate in planning and implementing the measures and, in general, to inform them of progress regarding the measures ordered by the Inter-American Court of Human Rights.

4. To order the State to investigate the facts that were reported and which gave rise to these measures, with the aim of discovering and punishing those responsible.

5. To order the State to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the representatives of the alleged victims to submit their observations on the respective reports within four weeks of receiving them and to order the Inter-American Commission on Human Rights to submit its observations on the said reports within six weeks of receiving them.

3. The Order of the Court of February 18, 2003, in which it decided:

1. To admit the State's waiver, for all effects, of the preliminary objections that it had filed.

2. To continue the public hearing convened in the Order of the President of the Inter-American Court of Human Rights of November 30, 2002, and all other procedural acts relating to the processing of the merits and possible reparations in this case.

3. To notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the alleged victim's next of kin.

4. The public hearing held at the seat of the Court on February 18, 19 and 20, 2003, in the Mack Chang case, pending before the Court.

5. The report of the expert witness, Iduvina Hernández, presented during this public hearing (supra fourth having seen paragraph), in which she stated that, since her summons to testify before the Court, a series of incidents had occurred, such as telephone calls and interference with her computer, which she considered to be threats. Moreover, under questioning by the representatives of the alleged victim about whether she considered that there was a connection between her appearance before the Court and those threats, and whether she feared some form of reprisal, the expert witness declared:

I believe so, because before the summons to appear and before this activity, I had never been confronted with such a difficult and unusual situation, in such a short lapse of time. When we have any activity that affects or relates to the Guatemala security services, there is something we consider abnormal in our sphere of work.

[...]

Yes, I am afraid that some entity linked to the State of Guatemala may react violently because I have given evidence.

6. The oral arguments of the representatives of the alleged victim's next of kin, in which they stated:

“[on] the issue of provisional measures, [the Court has] issued some provisional measures in connection with the domestic proceedings to protect the lives and to protect the integrity of the proceedings domestically. We ask that this Court extend those provisional measures during the

pendency of the appeal process so that there are no recriminations, not only against people that have appeared here, but against people that have appeared in the proceedings in Guatemala.

[...] Finally, on the provisional measures, we would ask that the Court state clearly and declare that its continuing jurisdiction remains in this case, in order to deter any future human rights violations and to provide rapid remedy in case there are any.”

In response to this statement by the representative of the victim's next of kin, the President asked the following question:

“Are you requesting an extension of the provisional measures of protection already ordered by this Court as to the persons protected and as to the measures of protection?”

And the representative of the victim's next of kin replied as follows:

“Correct, your Honor. We believe that we are entitled to that under Article 63(2) of the Convention.”

CONSIDERING:

1. That the State ratified the American Convention on May 25, 1978, and, in accordance with Article 62 of the Convention, it accepted the contentious jurisdiction of the Court on March 9, 1987.

2. That article 63(2) of the American Convention establishes that, in cases of “extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration and, in cases that have not yet been submitted to the Court, it may act at the request of the Commission.

3. That, in the terms of article 25(1) of the Rules of Procedure of the Court: At any stage of the proceeding 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 whatever provisional measures it deems appropriate, pursuant to Article 63(2) of the Convention.

4. That, from these provisions, it is clear that the Court may act on its own motion in cases of extreme gravity and urgency to avoid irreparable damage to persons .

5. That article 1(1) of the Convention establishes the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

6. That the facts presented by the representatives of the alleged victim's next of kin (supra sixth having seen paragraph) reveal the existence of a situation of extreme gravity and urgency for the life and safety of the next of kin of Myrna Mack Chang: Zoila Esperanza Chang Lau (mother); Marco Antonio Mack Chang (brother); Freddy Mack Chang (brother); Vivian Mack Chang (sister); Ronnie Mack Apuy (cousin); Lucrecia Hernández Mack (daughter) and the latter's children, which justify the adoption of provisional measures in their favour.

7. That, from the statements made by the expert witness, Iduvina Hernández, during the public hearing (supra fifth having seen paragraph), it is clear that she may be subject to reprisals as a result of her testimony before this Court.

8. That, in other cases, the Court has ordered provisional measures to protect witnesses who have testified before it ; likewise it is appropriate to order them in favor of the expert witnesses who have presented their reports to the Court; accordingly, it is necessary to adopt measures of protection to avoid irreparable damage to Iduvina Hernández.

9. That it is the responsibility of the State to adopt safety measures to protect all those persons who are subject to its jurisdiction and that this obligation is even more evident in relation to those who are participating in proceedings before the organs of protection of the American Convention.

10. That, in general, under domestic legal systems (internal procedural law), the purpose of provisional measure is to protect the rights of the parties in dispute, ensuring that the judgment on merits is not prejudiced by their actions *pendente lite*.

11. That, under international human rights law, the purpose of urgent and provisional measures goes further, because, in addition to their essentially preventive nature, they protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.

12. That the State must maintain provisional measures of protection in favour of the persons mentioned in the Orders of the President of the Court and of the Court of August 14 and 26, 2002, respectively, and expand the measures to the persons mentioned in the preceding considerations (*supra* sixth and eighth considering paragraphs).

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

In exercise of the authority invested in it by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To ratify the Orders of the President of the Inter-American Court of Human Rights and of the Inter-American Court of Human Rights of August 14 and 26, 2003, respectively.

2. To call upon the State to maintain the necessary measures to protect the life and safety of Helen Mack Chang, Viviana Salvatierra, América Morales Ruiz, Luis Roberto Romero Rivera, and the other members of the Myrna Mack Foundation.

3. To call upon the State to expand forthwith all necessary measures to protect the life and safety of the next of kin of Myrna Mack Chang: Zoila Esperanza Chang Lau (mother), Marco Antonio Mack Chang (brother), Freddy Mack Chang (brother), Vivian Mack Chang (sister), Ronnie Mack Apuy (cousin), Lucrecia Hernández Mack (daughter) and the latter's children.

4. To call upon the State to extend forthwith all necessary measures to protect the life and safety of Iduvina Hernández.

5. To call upon the State to plan and implement the provisional measures together with the beneficiaries of these measures or their representatives and, in general, to keep them informed of progress in the measures ordered by the Inter-American Court of Human Rights.

6. To call upon the State to report to the Inter-American Court of Human Rights about the provisional measures it has adopted in compliance with this order, within 15 days of receiving the corresponding notification.

7. To call upon the representatives of the alleged victim's next of kin to submit their comments on the State's report within one week of receiving it, and on the Inter-American Commission on Human Rights to present its comments within two weeks of notification of the State's report.

8. To call upon the State, following its first communication (supra sixth operative paragraph), to continue reporting to the Inter-American Court of Human Rights, every two months, about the provisional measures it has adopted, and to call upon the representatives of the alleged victim's next of kin to submit their comments on these reports by the State within four weeks of receiving them, and upon the Inter-American Commission on Human Rights to present its comments within six weeks of receiving notification of the respective State reports.

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