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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Nicholas Chapman Blake v. Guatemala
Doc. Type: Order (Provisional Measures)
Decided by: President: Antonio A. Cancado Trindade;
Judges: Sergio Garcia-Ramirez; Maximo Pacheco-Gomez; Hernan Salgado-Pesantes; Oliver Jackman; Alirio Abreu-Burelli
Dated: 6 June 2003
Citation: Blake v. Guatemala, Order (IACtHR, 6 Jun. 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 16, 1995, in which he decided:

1. To request the Government of the Republic of Guatemala to adopt forthwith all necessary measures to ensure effectively the protection of the life and safety of JUSTO VICTORIANO MARTÍNEZ MORALES, FLORIDALMA ROSALINA LÓPEZ MOLINA, VÍCTOR HANSEL MORALES LÓPEZ, EDGAR IBAL MARTÍNEZ LÓPEZ and SYLVIA PATRICIA MARTÍNEZ LÓPEZ.

2. To request the Government of the Republic of Guatemala to adopt all necessary measures so that the said persons may continue living in their place of residence and are assured that they will not be harassed or threatened by agents of the State of Guatemala or by persons acting with the acquiescence of the State.
[...]

2. The Order of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) adopted on September 22, 1995, in which it decided:

1. To ratify the Order of the President of August 16, 1995, and to request the Government of the Republic of Guatemala to maintain the provisional measures in favor of Justo Victoriano Martínez Morales, Floridalma Rosalina López Molina, Víctor Hansel Morales López, Edgar Ibal Martínez López and Sylvia Patricia Martínez López.

2. To call upon the Government of the Republic of Guatemala to report to the Court, every three months, on the provisional measures it has adopted.

3. To call upon the Inter-American Commission on Human Rights to send its comments on the reports of the Government of the Republic of Guatemala to the Court within one month of receiving notification thereof.

3. The Order of the Court of April 18, 1997, in which it decided:

1. To take note of the measures adopted by the State of Guatemala in compliance with the Order of the Court of September 22, 1995.

2. To call upon the State of Guatemala to expand the measures adopted to provide them to Justo Victoriano Martínez Morales, Floridalma Rosalina López Molina, Víctor Hansel Morales López, Edgar Ibal Martínez López and Sylvia Patricia Martínez López not only in their homes but outside of them.

4. The Order of the Court of August 18, 2000, in which it decided:

1. To request that the State of Guatemala maintain all the measures necessary to protect the lives and personal integrity of Justo Victoriano Martínez Morales, Floridalma Rosalina López Molina, Víctor Hansel Morales López, Edgar Ibal Martínez López and Sylvia Patricia Martínez López.

2. To request that the State of Guatemala inform the Court of the measures adopted to investigate the threats against the said persons, in conformity with the Secretariat's note in this respect, in order to obtain effective results that may lead to the identification of those responsible and their punishment.

3. To request that the State of Guatemala continue submitting its reports on the provisional measures adopted every six months, and that the Inter-American Commission on Human Rights submit its observations on the said reports within six weeks of receiving them.

5. The Order of the Court of June 2, 2001, in which it decided:

1. To call upon the State of Guatemala to maintain all necessary measures to protect the life and safety of Justo Victoriano Martínez Morales, Floridalma Rosalina López Molina, Víctor Hansel Morales López, Edgar Ibal Martínez López and Sylvia Patricia Martínez López.

2. To call upon the State of Guatemala to report to the Court, by July 2, 2001, at the latest, on the measures adopted in this case, in particular those it may have taken to investigate the threats to which the said persons have been subjected, in order to obtain effective results leading to the identification of those responsible and their punishment.

3. To instruct the Secretariat of the Court, once it has received the State's report, to forward it to the Inter-American Commission on Human Rights.

4. To request the Inter-American Commission on Human Rights to transmit to the Court its comments on the report mentioned in the preceding operative paragraph, within one month of receiving notification of the said report.

5. To call upon the State of Guatemala to continue presenting its reports on the provisional measures it has adopted every six months, and upon the Inter-American Commission on Human Rights to present its comments on those reports within six weeks of receiving them.

6. The report of the State of Guatemala (hereinafter "the State" or "Guatemala") of December 13, 2002, in which it submitted information regarding the death of Justo Victoriano Martínez Morales and indicated that:

On [December 13, 2002,] at 11 a.m., JUSTO VICTORIANO MARTÍNEZ, a person benefiting from safety measures provided by the Government of Guatemala at the request of the [...] Inter-American Court of Human Rights, died in the city of Huehuetenango. Justo Victoriano Martínez gave personal testimony in the Nicholas Chapman Blake case and, since then, at the request of the [...] Court, he has been provided with the necessary measures of personal and perimeter security to safeguard his safety.

The State also affirmed that:

According to the medical report of the Private Specialized Medicine Hospital of the city of Huehuetenango, Mr. Martínez was interned on the [...]12th of this month with clinical manifestations diagnosed as a HEPATIC COMA [and] at eleven a.m. [on December 13] he died as a result of HEPATIC CIRRHOSIS.

7. The communication of the Secretariat of the Court (hereinafter “the Secretariat”) of December 18, 2002, informing the representatives of the beneficiaries of the provisional measures that the time limit for presentation of their comments on the State’s report of November 13, 2002, had expired, and that they were therefore requested to forward the said comments.

8. The report of the State of January 10, 2003, in which it referred to the death of Justo Victoriano Martínez, one of the beneficiaries of the provisional measures, and requested that the corresponding measures of protection should be lifted, because “over the seven years during which these provisional measures were maintained, there were no incidents that demonstrated a real and imminent situation of danger for the life and safety of the beneficiary and his next of kin; consequently, in view of this fact, it is appropriate to indicate that the provisional measures have been prolonged excessively and without any justification [...].”

9. The note of the Secretariat of January 14, 2003, in which it requested the State to submit a death certificate or official document recording the death of Justo Victoriano Martínez Morales, so that this information could be submitted to the Inter-American Court at its next regular session.

10. The communication of the Secretariat of January 17, 2003, in which, on the instructions of the President, it requested the Inter-American Commission and the representatives of the beneficiaries of the measures to forward their comments on the State’s communication of January 10, 2003 (supra eighth having seen paragraph); and the Secretariat’s notes of February 3 and 10, 2003, in which it again requested the respective comments, which were not received.

11. The note of the representatives of the beneficiaries of the measures of February 19, 2003, in which they requested an extension for presentation of the comments requested in the preceding paragraph and the Secretariat’s note of the same date, in which, on the instruction of the President, it granted the said representatives and the Commission an extension until March 19, 2003, for the presentation of those comments, which again were not received.

12. The note of the Secretariat of January 23, 2003, in which it acknowledged receipt from the State of the death certificate corresponding to “Justo Víctor Morales Martínez” and requested Guatemala to clarify the name of this person in view of the difference between the last name indicated in the certificate and the name of the beneficiary indicated in the Orders of the Court as Justo Victoriano Martínez Morales; and the note of the Secretariat of February 11, 2003, in which it reiterated to the State the request for this clarification.

13. The communication of the State, received on March 11, 2003, in which it presented the clarification regarding the name of the beneficiary of the measures and a certificate indicating that the names “Justo Victoriano Martínez Morales, Justo Víctor Martínez Morales and Justo Víctor Morales Martínez” identify one and the same person, who was a beneficiary of provisional measures. Moreover, Guatemala reiterated its request that the provisional measures be lifted and terminated and the respective case file closed.

14. The note of the State of May 13, 2003, in which it indicated that “the Government of the Republic of Guatemala has requested the [...] Court to issue an order that decides to terminate and file these measures; however, no decision has been taken on the Government’s request and, therefore, the State of Guatemala communicates to the [...] Court its decision to cease to provide the safety measures that it had been providing to the next of kin of Justo Victoriano Martínez Morales, as of this date.”

15. The note of the Secretariat of May 15, 2003, in which, on the instructions of the President, it requested the representatives of the beneficiaries and the Inter-American Commission to submit comments on the State’s communication mentioned in the preceding paragraph.

16. The notes of the representatives of the beneficiaries of the measures and of the Commission of May 22, 2003, requesting an extension for the presentation of the comments on the State’s communication (supra fourteenth having seen paragraph); and the note of the Secretariat of May 23, 2003, in which, on the instructions of the President, it granted them a non-extendible period until June 3, 2003, to submit the said comments, so that the Court could examine them during the regular session to be held from June 4 to 7, 2003.

17. The communication of the representatives of the beneficiaries of the measures of June 3, 2003, in which they indicated that “the death of Victoriano Martínez could suffice to lift the measures adopted in his favor. However, the death of Mr. Martínez, one of the five beneficiaries, is not sufficient reason to terminate the measures of protection for the other four members of his family.” Moreover, the representatives indicated that Floridalma Rosalina López Molina had advised that “her son, Víctor Hansel Morales, had received death threats from unknown persons.” Consequently, they consider that the conditions stipulated in Article 63(2) of the Convention have not disappeared, in order to lift the measures with regard to the family of Justo Victoriano Martínez Morales “without a thorough evaluation of the safety conditions of each one of them.” Lastly, the representatives requested the Court to maintain the measures granted to Floridalma Rosalina López Molina and her children, Víctor Hansel Morales López, Edgar Ibal Martínez López and Sylvia Patricia Martínez López for six months more, and to request Guatemala to conduct an exhaustive assessment of the safety conditions of the beneficiaries of

the measures so as to take a decision on lifting them and, in particular to conduct an investigation into the complaint concerning the threats received by Víctor Hansel Morales López.

18. The communication of the Inter-American Commission of June 3, 2003, in which it indicated that it had verified that Justo Victoriano Martínez Morales had died on December 13, 2002. The Commission also stated that it had received information from Floridalma Rosalina López Molina, who affirmed that the death threats received in relation to the testimony given by Justo Victoriano Martínez Morales in the Blake case were addressed to both Mr. Martínez and his family and, in particular, she indicated that one of her sons had received death threats from unknown persons. In view of the foregoing, the Commission stated that, considering the “particular vulnerability of the Martínez López family, as well as the act of harassment that had occurred on [June 2] against one of its members, it was in order to maintain the provisional measures for a prudent period of six months.”

19. The judgments on merits and reparations in the instant case delivered by the Court on January 24, 1998, and January 22, 1999, respectively.

CONSIDERING:

1. That Guatemala has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention”) since May 25, 1978, and recognized 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.

3. That the Court, in the Orders adopted on September 22, 1995, April 18, 1997, August 18, 2000, and June 2, 2001, called upon the State to adopt the necessary measures to safeguard the life and safety of Justo Victoriano Martínez Morales and his next of kin, Floridalma Rosalina López Molina, Víctor Hansel Morales López, Edgar Ibal Martínez López and Sylvia Patricia Martínez López (supra second, third, fourth and fifth having seen paragraphs).

4. That, on December 13, 2002, the State requested that the provisional measures in favor of all the beneficiaries should be lifted, owing to the death of Justo Victoriano Martínez Morales and because, while they were in force, “there were no incidents to demonstrate a real and imminent situation of danger for the life and safety of the beneficiary and his next of kin.” (supra eighth having seen paragraph).

5. That, in the instant case, the State was requested to provide clarification with regard to the name of Justo Victoriano Martínez Morales, a beneficiary of the measures, which was submitted on March 11, 2003 (supra thirteenth having seen paragraph).

6. That the Commission and the representatives of the beneficiaries of the provisional measures did not forward their comments on the request for the lifting of the provisional measures, despite being requested to do so by this Court on several occasions (supra tenth having seen paragraph). In this respect, the requests for information should be presented within the established time limits, so that the Court may evaluate it, together with the information provided by the State, and take the corresponding decision on provisional measures, as most appropriate in accordance with the circumstances of the case.

7. That the Inter-American Court is not a permanent Court, so that matters submitted to its consideration may only be decided when it is sitting. In the instant case, when the fifty-eighth regular session of the Court was held from February 17 to March 7, 2003, the Court did not have sufficient information to evaluate the request to lift the provisional measures, because the State, the representatives, and the Commission had not yet transmitted all the requested information.

8. That, on May 13, 2003, the State communicated to the Court its decision “to cease to provide the safety measures that it had been providing to the next of kin of Justo Victoriano Martínez Morales as of this date” (supra fourteenth having seen paragraph).

9. That provisional measures are exceptional in nature, are adopted in function of the needs for protection and, once adopted, must be maintained while the basic requirements mentioned in the second considering paragraph subsist.

10. That only the Court has the competence to decide on the continuance or lifting of a provisional measure. Consequently, the provisional measures that it adopts are fully in force and produce their effects until the Court orders that they be lifted.

11. That, in accordance with the information provided by Guatemala in the instant case, “Justo Victoriano Martínez Morales, Justo Víctor Martínez Morales or Justo Víctor Morales Martínez”, as indicated in the clarification about his name requested of the State, died on December 13, 2002, so that it is no longer necessary to maintain the provisional measures adopted in his favor.

12. That the Commission and the representatives of the beneficiaries of the measures declared that the circumstances of extreme gravity and urgency that justified the adoption of provisional measures in favor of the next of kin of Justo Victoriano Martínez Morales persist, so that the measures of protection adopted in favor of Floridalma Rosalina López Molina, Víctor Hansel Morales López, Edgar Ibal Martínez López and Sylvia Patricia Martínez López, must be maintained, because they are still at risk.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred on it by Article 63(2) of the American Convention on Human Rights and Articles 25 and 29 of its Rules of Procedure,

DECIDES :

1. To lift and terminate the provisional measures adopted by the Inter-American Court of Human Rights in its Orders of September 22, 1995, April 18, 1997, August 18, 2000, and June 2, 2001, in favor of Justo Victoriano Martínez Morales.

2. To call upon the State to maintain the necessary measures to protect the life and safety of Floridalma Rosalina López Molina, Víctor Hansel Morales López, Edgar Ibal Martínez López and Sylvia Patricia Martínez López.

3. To call upon the State to report to the Inter-American Court of Human Rights, within fifteen days of receiving notification of this Order, on the provisional measures it has adopted to comply with it.

4. To call upon the State to report to the Inter-American Court of Human Rights every three months regarding the adoption of the measures ordered by this Court, in order to protect the life

and safety of the persons indicated in the second operative paragraph. Furthermore, to call upon the beneficiaries of the measures and on their representatives to submit their comments on these reports of 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 reports of the State.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez
Máximo Pacheco-Gómez
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