

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Lysias Fleury v. Haiti
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: 7 June 2003
Citation: Fleury v. Haiti, Order (IACtHR, 7 Jun. 2003)
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HAVING SEEN:

1. The March 13, 2003 brief by the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) in which it submitted to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), pursuant to Article 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), a request for provisional measures in favor of Lysias Fleury, with respect to the Republic of Haiti (hereinafter “the State” or “Haiti”) with the aim of protecting his life and right to humane protection, in relation to a request filed by Lysias Fleury (hereinafter “the applicant” or “Mr. Fleury”) before the Commission.
2. The arguments of the Commission, based on the following alleged facts:
 - a) Lysias Fleury, a Haitian human rights advocate working for the Justice and Peace Episcopal Committee, complains that he was arrested without a court order on June 24, 2000, close to 19:00 hours, while he was at home, and then detained and severely beaten by police agents and civilians and constantly threatened by the individuals who mistreated him;
 - b) the applicant was allegedly also transferred to the Bon Repos police station at Port-au-Prince, where he was detained for 17 hours. There he suffered “degrading treatment,” which caused him “grave injuries;”
 - c) the applicant argues that he suffered said mistreatment because he is a human rights advocate;
 - d) according to the applicant, no criminal investigation was undertaken as a result of the complaint he filed on August 1, 2002 before the Parquet of Port-au-Prince. Neither was any criminal investigation initiated on the basis of the complaint filed on June 27, 2002 by the Director of the Justice and Peace Episcopal Committee before the Inspector General in chief of the National Police of Haiti;
 - e) the applicant states that he has suffered acts of intimidation and threats, several times, by individuals who participated in the alleged facts of June 24, 2002;

f) the applicant states that he has contacted domestic authorities several times so as to pursue “the administrative investigation opened in his case.” Specifically, the applicant went to the office of the General Inspector of the National Police of Haiti, where he had to identify his aggressors, in their presence. At that time, the applicant explained to the inspector that he felt fear and that his life was threatened. According to the applicant, no measures were adopted to ensure his protection;

g) while he continues to work as a human rights advocate, Mr. Fleury currently lives undercover and no longer lives in his house for fear of being attacked once again;

h) on October 10, 2002, the Commission received a request, dated that same day, in which the applicant, Lysias Fleury, asked the Commission to adopt precautionary measures in his favor. On October 15, 2002, the Commission adopted precautionary measures in favor of Mr. Fleury, pursuant to Article 25 of its Rules of Procedure, the object of which was for the State to ensure protection of his life and his right to humane treatment and to adopt such measures as may be required for an investigation to be conducted regarding the facts stated by the applicant. On November 12, 2002, on February 10, 2003, and on March 5, 2003, the Commission reiterated said precautionary measures and asked the State to report on measures adopted. Almost twelve weeks after expiration of the 15-day term initially set by the Commission for the State to respond, the Commission received, on January 27, 2003, a January 10, 2003 note by the State in which it acknowledged receipt of a letter by the Commission and reported that the file had been forwarded to the respective authorities for appropriate processing. On March 7, 2003 the applicant was received by an agent of the Ministry of Foreign Affairs to discuss the precautionary measures adopted by the Commission, at which meeting he was informed that said Ministry would contact the director of the National Police of Haiti and that a letter would be sent to the Ministry of Justice to request additional information on the status of his file.

3. The observations by the Commission in which it pointed out that as a whole the alleged facts constitute an urgent situation of extreme gravity that could cause irreparable damage to Lysias Fleury, which warrants the Court ordering provisional measures, pursuant to Article 63(2) of the American Convention. Furthermore, in view of the fact that the applicant is a member of a human rights advocacy organization, the State has the obligation to ensure protection and, for these reasons, the Court should order provisional measures, as it has done in similar cases. Finally, the Commission argues that the State has not respected the precautionary measures that it ordered in the instant case.

In view of the above, the Commission asked the Court to order the State:

1. to immediately adopt such measures as may be necessary for the effective protection of the life and the right to humane treatment of Lysias Fleury, specifically

a. to immediately adopt such measures as may be necessary to avoid any contact between the applicant and the persons he has identified as his aggressors;

b. to ensure physical protection of Mr. Fleury by having him guarded by police agents or private guards;

c. to adopt these measures in coordination with the applicant.

1. to adopt such measures as may be necessary to ensure an adequate and effective investigation of the facts stated by the applicant in his complaint as well as to identify those responsible and, if necessary, to try and to punish them.

2. to report to the Court, within a brief term, on the concrete and effective measures adopted by the State to comply with the provisional measures and to continue reporting to the Court on said measures every 2 months.

4. The March 18, 2003 Order of the President of the Inter-American Court of Human Rights (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 Lysias Fleury.

2. To order the State to investigate the facts that gave rise to adoption of these urgent measures, with the aim of identifying those responsible and punishing them as appropriate.

3. To order the State to allow the beneficiary of these measures to participate in their planning and implementation and, in general, to inform him of progress regarding implementation of the measures ordered by the President of the Inter-American Court of Human Rights.

4. To order the State to report to the Inter-American Court of Human Rights, within 15 days of when it receives notice of the instant Order, on the urgent measures it has adopted to comply with this Order.

5. To order the Inter-American Commission on Human Rights to submit its observations within two weeks of when it receives notice of the report filed by the State.

6. To order the State, subsequent to its first report (supra operative paragraph four), to continue reporting to the Inter-American Court of Human Rights, every 30 days, on the urgent measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations on said reports by the State within two weeks of when it receives notice of the respective reports filed by the State.

5. The April 3, 2003 letter of the Secretariat of the Court (hereinafter “the Secretariat”) in which it reminded the State to submit its first report on the urgent measures ordered by the President on March 18, 2003.

6. The additional information submitted by the Inter-American Commission on April 16, 2003, according to which the beneficiary has not been contacted by the Haitian authorities since the March 18, 2003 Order of the President was issued, and the latter have not adopted any measures for protection of the beneficiary’s life and his right to humane treatment, nor has there been progress regarding the investigation of the facts that gave rise to urgent measures.

7. The May 20, 2003 brief filed by the State in which it acknowledged receipt of the April 4, 2003 reminder by the Secretariat (supra 5) and it stated that said letter was forwarded to the Ministry of Justice and Public Security, “for appropriate action.”

8. The May 22, 2003 letter by the Inter-American Commission forwarding to the Court a March 21, 2003 note, received by the Secretariat of the Commission on May 6, 2003, in which the State referred to the precautionary measures ordered by the Commission (supra 2(h)). The Commission also reiterated its observations made in the April 16, 2003 brief (supra 6).

9. The May 30, 2003 brief in which the Inter-American Commission referred to the letters submitted by the State to the Inter-American Court on May 20, 2003 (supra 7) and it pointed out that they were received seven weeks after expiration of the term set forth in the March 18, 2003 Order of the President (supra 4). The Commission also pointed out that said letters do not constitute “a report to the Inter-American Court of Human Rights [...] regarding urgent measures adopted [by the State].” On the other hand, the Commission reported that Mr. Fleury’s situation remained the same as it was described in the April 16 and May 22, 2003 briefs, “that is, he continues to live undercover and not at his house.” Finally, the Commission asked the Court to:

1. find that the State of Haiti has not fulfilled its obligation to effectively implement the March 18, 2003 Order of the President of the Inter-American Court of Human Rights;
2. ratify the March 18, 2003 Order of the President of the Inter-American Court of Human Rights, issue an Order on provisional measures in favor of Lysias Fleury, all the above in reiteration of each of the operative paragraphs of the March 18, 2003 Order of the President of the Inter-American Court of Human Rights;
3. order the State to report to the Court, within a brief term, on concrete and effective measures adopted by Haiti to carry out the provisional measures, and secondly to report to the Court in the same manner every two months.

10. Resolutions 1818/01 and 1842/02 of the General Assembly of the Organization of American States, in which it decided:

1. To reiterate its support for the work carried out, at both the national and regional levels, by human rights defenders; and to recognize their valuable contribution to the protection, promotion, and observance of human rights and fundamental freedoms in the Americas.
 2. To deplore acts that directly or indirectly prevent or hamper the work of human rights defenders in the Americas.
 3. To urge member states to step up their efforts to adopt the necessary measures, in keeping with their domestic law and with internationally accepted principles and standards, to guarantee the life, personal safety, and freedom of expression of human rights defenders.
- [...]

CONSIDERING:

1. State ratified the American Convention on September 27, 1977 and, pursuant to Article 62 of the Convention, it accepted contentious jurisdiction of the Court on March 20, 1998.
2. Article 63(2) of the American Convention establishes that, “[i]n 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. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.”
3. Article 25(1) of the Rules of Procedure of the Court establishes that, “[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. Article 1(1) of the Convention enshrines the duty of the States Party to respect the rights and liberties recognized in that treaty and to ensure their free and full exercise by all persons under their jurisdiction.
5. Respect for human rights in a democratic State depends, to a large extent, on effective and adequate guarantees enjoyed by human rights advocates to freely conduct their activities, and special attention should be paid to actions limiting or hindering, whether directly or indirectly, the work of human rights advocates.
6. The aim of provisional measures, in 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 is not hindered by their actions *pendente lite*.
7. The aim of urgent and provisional measures, in International Human Rights Law, goes further, inasmuch as, in addition to their essentially preventive nature, they effectively protect fundamental rights, insofar as they seek to avoid irreparable damage to persons.
8. The Inter-American Commission has adopted precautionary measures, which have not led to the required effects, and, instead, recent events lead to the presumption that Lysias Fleury is in a situation of grave risk.
9. The information submitted by the Commission in the instant case demonstrates *prima facie* the existence of a threat to the life and the right to humane treatment of Lysias Fleury. The practice of *prima facie* assessment of a case and application of presumptions in face of the need for protection, have led the Court to order Provisional Measures various times.
10. The case that the Commission refers to in its request is not being heard by the Court regarding the merits, and therefore a decision on provisional measures does not involve a decision on the merits of the controversy between the applicants and the State.
11. Both the Commission and the State must submit their reports and their observations on provisional or urgent measures within the term set by the Court or by the President.
12. States must comply in good faith with their obligations under conventions (*pacta sunt servanda*) as set forth in Article 26 of the 1969 Vienna Convention on the Law of Treaty, which codifies a basic principle of general international law.
13. The March 18, 2003 Order of the President of the Court was in accordance with the facts and circumstances and was adopted in conformity with the law, all of which justified adoption of urgent measures.

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 the Rules of Procedure,

DECIDES:

1. To ratify in its entirety the March 18, 2003 Order of the President of the Inter-American Court of Human Rights.
2. To find that the State has not effectively implemented urgent measures ordered by the President of the Inter-American Court in his March 18, 2003 Order.

3. To order the State to adopt, forthwith, such measures as may be necessary to protect the life and the right to humane treatment of Lysias Fleury.
4. To order the State to investigate the facts that gave rise to adoption of these provisional measures, with the aim of identifying those responsible and punishing them as appropriate.
5. To order the State to allow the beneficiary of these measures to participate in their planning and implementation and, in general, to inform him of progress regarding implementation of the measures ordered by the Inter-American Court of Human Rights.
6. To order the State to continue reporting to the Inter-American Court of Human Rights, every 30 days, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations on said reports by the State within two weeks of when it receives notice of them.

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