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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Marta Colomina and Liliana Velasquez v. Venezuela
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: 8 September 2003
Citation: Colomina v. Venezuela, Order (IACtHR, 8 Sep. 2003)
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HAVING SEEN:

1. The July 21, 2003 communication and its annexes, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and 25 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), a request for provisional measures for the Bolivarian Republic of Venezuela (hereinafter “the State” or “Venezuela”) “to protect the life, the right to humane treatment and freedom of expression of journalists Marta Colomina and Liliana Velásquez, who suffered an attempt against their lives at daybreak on June 27, 2003, when they were going toward the television channel TELEVEN to present their daily program “La Entrevista”.

2. The grounds given by the Inter-American Commission for its request for provisional measures, as follows:

a. in notes dated February 1 and March 5, 8 and 19, 2002, the Commission received a request for precautionary measures in favor of Venezuelan journalists Ibéyise Pacheco, Patricia Poleo, Marianela Salazar and Marta Colomina, who on January 30, 2002 broadcast a video revealing conversations between the Venezuelan Army and the Colombian guerrilla forces. The day after the video was broadcast, an explosive artifact was thrown from two motor vehicles to the door of the daily newspaper “Así es la Noticia”, directed by Ibéyise Pacheco. The artifact exploded and destroyed the main access door to the building. The applicants also pointed out that they found pamphlets on the street with threats against the journalists, and that minutes afterwards individuals who identified themselves as members of the “Movimiento Revolucionario Tupacamaru” called the telephone exchange at the daily.

b. due to the above, on March 22, 2003 the Inter-American Commission ordered the following precautionary measures in favor of journalists Marta Colomina, Ibéyise Pacheco, Patricia Poleo and Marianela Salazar, pursuant to Article 25(1) of its Rules of Procedure:

1) Provide protection as required by journalists Ibéyise Pacheco, Patricia Poleo, Marta Colomina and Marianela Salazar, to safeguard their right to life and to humane treatment, pursuant to Articles 4 and 5 of the American Convention.

2) Conduct an exhaustive investigation of the facts that took place on January 31, 2002 at the main offices of the daily “Así es la Noticia” and the threats received by journalists Ibéyise Pacheco, Patricia Poleo, Marta Colomina and Marianela Salazar.

3) Adopt such measures as may be necessary to protect full exercise of freedom of expression by the journalists, pursuant to Article 13 of the Convention.

4) Abstain from any action that might have the effect of intimidating journalists Ibéyise Pacheco, Patricia Poleo, Marta Colomina and Marianela Salazar.

c. the precautionary measures ordered by the Commission to protect the life and the right to humane treatment of Marta Colomina were ineffective, as aggressions against her have not ceased and investigations have been fruitless;

d. at daybreak on Friday, June 27, 2003, Marta Colomina was heading toward the television channel TELEVEN (hereinafter “TELEVEN”), in her car, driven by Héctor José Herrera, her “chauffeur-bodyguard”, to present the daily program “La Entrevista”, which starts at 5:55 a.m. That morning, Liliana Velásquez, the producer of the program, was following Marta Colomina in her own vehicle. A short distance from their destination, the vehicles were intercepted and blocked in a synchronized manner by two vehicles with eight individuals. Then, four of them, with their faces covered by ski masks, went toward Marta Colomina’s vehicle aiming their guns both at the chauffeur and at the journalist. An individual whose face was not covered went to the back of his vehicle, from where he took a “gigantic Molotov” type bomb. The other four individuals, who also had ski masks, got out of the vehicle and aimed their weapons in all directions. The “Molotov” bomb, made with a large, 19-gallon, thick glass bottle, of the type used to sell water, hit the windshield of the journalist’s vehicle which was protected by a special security coating against riots, for which reason it resisted the impact, sinking and splintering, so that the bomb did not enter the car and only spilled the gasoline that it contained. However, the individual who tried to make the bomb explode, “perturbed by the unexpected reaction of journalist Liliana Velasquez, who insistently and unceasingly honked the horn, making a great amount of noise at daybreak, was unable to activate it.” Finally, the individuals desisted from the attempted action and fled.

e. twenty days after the attempt against Marta Colomina, the Public Prosecutor’s Office has not opened any investigation, as ordered by the Criminal Procedures Code. Neither Colomina and Velásquez nor the TELEVEN security staff who arrived at the site have been summoned to render testimony before the Public Prosecutor’s Office. Only the chauffeur-bodyguard Héctor José Herrera was summoned by a Prosecutor of the Public Prosecutor’s Office for a “conversation.” There is no knowledge of an ongoing investigation or that any type of information or evidence was requested.

f. “the only protection that [Marta Colomina] ha[s] received, as a consequence of the precautionary measures, was from the Mayor of the Municipality of Chacao, who supplied two motorized police officers, with alternating forty-eight hour shifts, to follow her on the motorcycle when [she] travel[s] in [her] car, except in the mornings when [she] goes to the [television] channel from 5 to 7 a.m., when the guard on shift drives [her] car. The obligation to

guard [her] ceases when [she] arrive[s] at [her] home, and is in effect only when [she] perform[s] job-related activities; the rest of the time, when [she is] at home or heading anywhere else [she] ha[s] no protection at all;" and

g. on June 28, 2003 the Minister of Infrastructure, Diosdado Cabello, referring to the attack suffered by the journalists on June 27, stated the following to the daily newspaper "El Universal":

[w]hat happens is that there are people who are losing audience, nobody watches or hears them, who because of the flask of venom that they drink in the morning will say anything, and need to call attention to themselves somehow. That is what is happening. For this lady, or any other, to tell me that she suffered an attack, I state right now that I do not believe so [...] all these things I underline alleged, in black print, in quotes or bright colors, because for quite some time I no longer believe anything, about these claims that I was attacked, that they shot my car, always blaming the government.

3. The additional statement by the Commission, in its request for provisional measures, that:

a. it has corroborated that during 2002 "there has been a progressive and significant increase of threats and attacks against journalists and especially against those who cover political events and rallies. During the in loco visit, conducted [by the Commission] in past May, the Commission was informed that journalists were the direct targets of aggression and harassment. The general state of the prevailing situation in Venezuela has generated a climate of aggression and continuous threats against freedom of expression and specifically against the personal safety of journalists, cameramen, photographers, and other media workers;"

b. to date, the State has not informed of any arrests in connection with the facts that gave rise to the seven precautionary measures ordered by the Commission during the year 2002, nor has Venezuela prosecuted anyone for the facts that gave rise to the request for provisional measures ordered by the Court on November 27 in the case of the RCTV employees; and

c. the fact that the June 27, 2003 attempt against the life of Marta Colomina and Liliana Velásquez failed, demonstrates that the journalists are still in an urgent situation of imminent danger.

4. The July 24, 2003 note by the Inter-American Commission, in which it supplied additional information, regarding the fact that "on the night of July 21, 2003 a resounding box with pamphlets against [Marta] Colomina exploded one block away from the radio station where she works."

5. The July 30, 2003 Order of the President of the Court, in which he decided:

1. To order the State to adopt, forthwith, such measures as may be necessary to protect the life, the right to humane treatment and freedom of expression of journalists Marta Colomina and Liliana Velásquez.

2. To order the State to allow the beneficiaries to participate in planning and implementation of the protection measures and, in general, to inform them on progress regarding the measures ordered.

3. To order the State to investigate the facts that gave rise to the instant measures, with the aim of identifying and punishing those responsible.

4. To order the State to report to the Inter-American Court of Human Rights, no later than August 14, 2003, on the measures adopted to comply with the instant Order.

5. To order the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights, within a week of when it receives the report filed by the State, whatever observations it deems pertinent.

6. To order the State, subsequent to its first communication (supra operative paragraph four), to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to said reports within six weeks of the date they are received.

6. The August 29, 2003 note by the Secretariat of the Court in which it reminded the State to submit the report required by operative paragraph four of the July 30, 2003 Order of the President. At the time of the instant Order, the State has not submitted said report.

7. The August 29, 2003 communication by the Inter-American Commission to which it attached a brief by the applicants with additional information on the status of implementation of the urgent measures granted in favor of journalists Colomina and Velásquez. In said note, the applicants pointed out that the State:

ha[s] not adopted any of the necessary measures to protect the life, the right to humane treatment and freedom of expression of Marta Colomina and Liliana Velásquez, nor have they been summoned by any body of the State to allow the beneficiaries to participate in planning and implementation of the protection measures. There is no knowledge, either, of any investigation being conducted by the State regarding the facts stated in the claim, with the aim of identifying and punishing those responsible, or if this is being done there is no information on any progress.

The applicants also reported that “the threats against the life, the right to humane treatment and freedom of expression of journalists Marta Colomina and Liliana Velásquez have progressively worsened after the attack that they suffered.” Finally, the applicants requested that a public hearing be held at the seat of the Court “to evaluate non-compliance by the State of Venezuela” with the protection measures granted.

CONSIDERING:

1. The State ratified the American Convention on August 9, 1977 and, pursuant to Article 62 of that Convention, it accepted the contentious jurisdiction of the Court on June 24, 1981.

2. 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,” the Court may adopt such provisional measures as it deems pertinent in matters it has under consideration, and in cases not yet submitted to the Court, it may act at the request of the Commission.

3. Pursuant to Articles 25(1) and 25(2) 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.

[w]ith respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. Article 1(1) of the Convention establishes 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. The background information provided by the Commission in its request (supra Having Seen 2, 3 4 and 7) demonstrate prima facie the existence of a situation of extreme gravity and urgency regarding the life, the right to humane treatment and freedom of expression of journalists Marta Colomina and Liliana Velásquez.

6. The aim of provisional measures, in national legal systems (domestic procedural law), in general, is to preserve 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 because, in addition to their essentially preventive nature, they effectively protect fundamental rights, insofar as they seek to avoid irreparable damage to persons.

8. It is the responsibility of the State to adopt security measures to protect all persons under their jurisdiction, and this duty becomes even more evident with respect to those involved in proceedings before the protection bodies of the American Convention.

9. The Court has examined the facts and circumstances that gave rise to the July 30, 2003 Order of the President (supra Having Seen 5), which it ratifies because it finds that it is in accordance with the law and with the merits in the proceedings.

10. To date, the State has not submitted the urgent report required by the July 30, 2003 Order of the President regarding measures adopted to effectively insure the life, the right to humane treatment and freedom of expression of journalists Marta Colomina and Liliana Velásquez.

11. Non-compliance by the State is especially grave due to the juridical nature of urgent measures and provisional measures, seeking to prevent irreparable damage to persons in situations of extreme gravity and urgency.

12. The provision set forth in Article 63(2) of the Convention makes it mandatory for the State to adopt the provisional measures ordered by this Court, because the basic principle of law regarding the responsibility of the State, backed by international case law, has established that the States must comply in good faith with their treaty obligations (*pacta sunt servanda*).

13. The State also has the obligation to investigate the facts that gave rise to this request for provisional measures, with the aim of identifying those responsible and punishing them as appropriate.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

exercising its authority under 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 July 30, 2003 Order of the President of the Inter-American Court of Human Rights.
2. To order the State to adopt and maintain such measures as may be necessary to protect the life, the right to humane treatment and freedom of expression of journalists Marta Colomina and Liliana Velásquez.
3. To order the State to allow the beneficiaries to participate in planning and implementation of the protection measures and, in general, to inform them of progress regarding the measures ordered.
4. To order the State to investigate the facts that gave rise to the instant measures, with the aim of identifying and punishing those responsible.
5. To order the State to report to the Inter-American Court of Human Rights, no later than September 15, 2003, on the measures adopted to comply with the instant Order.
6. To order the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights, within a week of the date it receives notice of the report by the State, whatever observations it deems pertinent.
7. To order the State, subsequent to its first communication (supra operative paragraph five), to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the Inter-American Commission on Human Rights to submit its observations to said reports within six weeks of the date they are received.
8. To notify the instant Order to the State and to the Inter-American Commission on Human Rights.

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