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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; Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli; Carlos Vicente de Roux-Rengifo
Dated:	20 November 2003
Citation:	Bamaca Velasquez v. Guatemala, Order (IACtHR, 20 Nov. 2003)
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HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter “the President”) in the Bámaca Velásquez Case on April 2, 1998, wherein it decided:

1. To summon representatives of the State of Guatemala and the Inter-American Commission on Human Rights to a public hearing on this matter at the seat of the Inter-American Court of Human Rights, on June 16, 1998 at 10:00 a.m. to hear the declarations [...] of the following witnesses [...]:

witnesses proposed by the Inter-American Commission:

Santiago Cabrera López, former combatant of the URNG who would declare about the illegal detention and torture of Mr. Bámaca Velásquez;

[... and]

Otoniel de la Roca Mendoza, who would declare about the torture and detention of Efraín Bámaca Velásquez in March 1992[.]

[...]

2. The communication of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) on May 15, 1998, to inform that “the witness Otoniel de la Roca Mendoza was located in the United States [of America] and w[as] defining [at that moment] his immigration status as a refugee,” so there was a possibility that he would be unable to travel to the seat of the Court for the summoned public hearing. On June 11, 1998 the Commission stated that “there w[as] a possibility for the witness [de la Roca Mendoza] to b[e] unable to travel to San José, Costa Rica to attend the public hearing due to legal issues.”

3. The Order of the Inter-American Court of Human Rights (hereinafter “the Court”, “the Inter-American Court”, or “the Tribunal”) on August 29, 1998, wherein it decided:

[...]

2. To call upon the State of Guatemala to adop[t] said measures [as] necessary to protect the life and personal integrity of Alfonso Cabrera Viagres, María Victoria López, Blanca Cabrera, Carmenlinda Cabrera, Teresa Aguilar Cabrera, Olga Maldonado, and Carlos Alfonso Cabrera.

3. To call upon the State of Guatemala to investig[ate] the facts set forth [in the Order] and repor[t] on the situation of the persons in question.

[...]

4. The September 1, 1998 Order of the Court, wherein the Tribunal considered that “Otoniel de la Roca Mendoza [...] did not subm[it] his testimony before the Court during the public hearing held by the Tribunal at its seat on June 16, 17, and 18, 1998” wherein it decided:

1. To summon the State of Guatemala and the Inter-American Commission on Human Rights to a public hearing to be he[ld] at the seat of the Organization of American States in Washington D.C., United States of America, at 10:00 a.m. on October 15, 1998, to hear the declarations of the following witnesses:

witnesses proposed by the Inter-American Commission:

[...]

Otoniel de la Roca Mendoza, who would declare about the torture and detention of Efraín Bámaca Velásquez in March 1992.

[...]

5. The transcript of the public hearing held on October 15, 1998 in Washington D.C., United States of America- wherein a commission composed of the judges Salgado Pesantes, Cançado Trindade, and Abreu Burelli, heard the testimony of Mr. Otoniel de la Roca Mendoza in regard to the Bámaca Velásquez Case.

6. The Inter-American Court of Human Rights Judgment on the merits, delivered on November 25, 2000.

7. The Order of the President regarding provisional measures on February 16, 2001, wherein he considered:

[...]

3. the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, and thirteenth report of the State of Guatemala □...□ wherein it informed the Court that the protection measures consisted in a 24-hour patrolling of the beneficiaries [Santiago Cabrera and next of kin] and that as a result of the visits, it has been confirmed that the beneficiaries “have not been subject to any threats or damage whatsoever.”

4. The observations of the Inter-American Commission on Human Rights □...□ about the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth State reports, wherein it challenged the way Guatemala was complying with the measures adopted by the Court.

[...]

And wherein it summoned the Commission and the State of Guatemala (hereinafter “the State”) to a public hearing on March 13, 2001, since there was a disagreement between the parties about the measures adopted by the State.

8. The communication of the representatives of the victims and next of kin, the Center for Justice and International Law (CEJIL) (hereinafter “the representatives of the victims” or “the representatives”) on June 26, 2001, wherein they informed on the risky situation faced by Mrs. Blanca Noelia Meléndez and the children of Mr. Otoniel de la Roca Mendoza, the latter who “[i]n 1997, [...] left Guatemala as the only possible way to guarantee his life and liberty.”

9. The August 29, 2001 Order of the Court, where in the operative paragraph it decided:

[t]he Court would accep[t] and kn[ow] autonomously the requests, arguments, and proof of the beneficiaries of the provisional measures adopted by the Court in the cases where the application has been filed before the Court, that, nevertheless, will not exoner[ate] the Commission, within the framework of its conventional obligations, from informing the Court as request[ed] by the Commission.

10. The September 5, 2001 Order of the Court wherein it decided:

1. To call upon the State to maint[ain] the provisional measures adopted by the Court on August 29, 1998, in favor of Alfonso Cabrera Viagres, María Victoria López, Blanca Cabrera, Carmelinda Cabrera, Teresa Aguilar Cabrera, Olga Maldonado, and Carlos Alfonso Cabrera.

2. To call upon the State to investig[ate] the facts in the matter and info[rm] the Court on the situation of the persons in question.

[...]

11. The communication by the representatives on October 9, 2001 wherein they informed about the new facts affecting the witness Otoniel de la Roca Mendoza and “express[ed] [their] concern about the situation of the [latter] and next of kin, and that they could be subject to retaliation acts related to their declarations before the Inter-American Court of Human Rights.”

12. The February 22, 2002 Judgment of the Inter-American Court on the damages.

13. The December 20, 2002 Order of the President wherein he decided:

1. To call upon the State to ado[pt], forthwith, any measures [as] necessary to protect the life and personal integrity of José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, Alberta Velásquez, Rudy López Velásquez and other next of kin of the Bámaca Velásquez family permanently livi[ng] in Guatemala.

2. To call upon the State to [let] the representatives of the victims participate in the planning and implementation of protection measures and, in general, ke[ep] them informed about the progress of the urgent measures prescribed by the President of the Inter-American Court of Human Rights.

3. To call upon the State to investig[ate] the reported facts motivating the present measures with the purpose of finding the responsible parties and punish them.

[...]

14. The communication of the Secretariat of the Inter-American Court (hereinafter “the Secretariat”) on January 14, 2003, wherein it required the State to submit a report on the urgent adopted measures to comply with the December 20, 2002 Order of the President (supra Having Seen 13).

15. The February 21, 2003 Order of the Court, wherein it decided:

[...]

2. To call upon the State of Guatemala to ado[pt], forthwith, any measures [as] necessary to protect the life and personal integrity of José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, Alberta Velásquez, Rudy López Velásquez and other next of kin of the Bámaca Velásquez family permanently livi[ng] in Guatemala.

3. To call upon the State of Guatemala to ado[pt], forthwith, any measures [as] necessary to guarantee that the beneficiaries of the present measures cou[ld] continue living in the usual residence.

4. To call upon the State to [let] the representatives of the victims participate in the planning and implementation of the protection measures and, in general, ke[ep] them informed about the progress of the Provisional Measures prescribed by the Inter-American Court of Human Rights.

5. To call upon the State to investig[ate] the reported facts motivating the present measures with the purpose of finding the responsible parties and punish them.

[...]

16. The September 23, 2003 Communication of the representatives, wherein they requested the Court to grant provisional measures, in accordance with Article 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in favor of Otoniel de la Roca Mendoza’s next of kin, who “was a key witness to determine the State of Guatemala liability” in this matter, and stated that they filed said request “based on a series of facts reflecting a situation of extreme gravity and urgency”. In said document, the representatives requested the Tribunal:

I. [...] to decr[ee] [p]rovisional protection [m]easures in favor of [the] follo[wing] persons and ord[er] the State of Guatemala, to adopt security measures to guarantee their life and personal integrity.

1) Emerita Mendoza (aunt of Otoniel and mother of José, and Galindo Álvarez Mendoza and grandmother of Wendy Pérez)[;]

2) Wendy Pérez Álvarez (cousin in first degree of Otoniel and niece of Galindo Álvarez Mendoza)[;]

3) Sulni Madeli and José Oswaldo Pérez Álvarez (siblings of Wendy Pérez Álvarez, cousins in second degree of Otoniel de la Roca Mendoza and grandchildren of Emerita Mendoza)[;]

4) Jacobo, José Pioquinto, Alez Javier Álvarez (cousins in second degree of Otoniel de la Roca Mendoza and grandchildren of Emerita Mendoza and living with her)[;]

5) Germán Aníbal de la Roca Mendoza and Kevin Otoniel de la Roca Mendoza (sons of Otoniel de la Roca Mendoza and Blanca Noelia)[;]

- 6) Blanca Noelia Meléndez (exwife of Otoniel de la Roca Mendoza)[; and]
- 7) Aron Álvarez Mendoza (son of Emerita, brother of Galindo and cousin of Otoniel) and next of kin [.]

II. To implement the granted measures by common consent between the protected persons and their representatives before the State of Guatemala.

17. The grounds of the representatives of the victims for their request for provisional measures in the following facts:

a. on June 2001 Otoniel de la Roca Mendoza, “due to harassment and threats, he left Guatemala as the only way to guarantee his life”, since he was about to declare before the Inter-American Court “to determine the State of Guatemala liability for the violations of human rights against Efraín Bámaca Velásquez and his next of kin”. Moreover, they informed that Blanca Noelia Meléndez, his ex partner and children, Germán Aníbal and Kevin Otoniel de la Roca Mendoza, had similar problems;

b. Otoniel de la Roca Mendoza declared before a three-judge commission of the Inter-American Court in a public hearing held on October 15, 1998 on the merits of the case in Washington, D.C., United States of America, “despite the pressure and threats face[d] by him and his next of kin.”

c. As of the moment of said declaration, Mr. de la Roca Mendoza “has been a victim of constant threats and persecution of his immediate family,” despite the fact that they were living outside Guatemala;

d. in April 2002 in the house of Emerita Mendoza, aunt of Otoniel de la Roca Mendoza, they received phone calls requesting information to contact Otoniel de la Roca Mendoza;

e. Otoniel de la Roca Mendoza ex partner, Blanca Noelia Meléndez, in June 2003 informed that unidentified persons were watching her house and received a phone call telling her that his son Germán was going to be killed;

f. Otoniel de la Roca Mendoza received phone calls in his house, outside Guatemala, in July 2003, telling her that Jennifer Harbury was paying and warning her that “they were going to kill all [her] family and [that] finally [he] [was going] to be killed,”

g. José Álvarez Mendoza, Byron Mendoza, and Galindo Álvarez Mendoza, cousins of Otoniel de la Roca Mendoza, in 2000, 2002, and 2003, respectively, were kidnapped, and days later their bodies were found, facts “followin[g] the same family persecution pattern.” The last murder took place in September 2003 in the presence of the child Wendy Álvarez Mendoza; and

h. on September 5, 2003, the family of Emerita Mendoza, aunt of Otoniel de la Roca Mendoza and mother of Galindo Álvarez Mendoza, and who lives with their granddaughter Wendy Álvarez Mendoza, received threatening phone calls at home.

18. The September 26, 2003 Order of the President, wherein he decided:

1. To call upon the State to ado[pt], forthwith, any measures [as] necessary to protect the life and personal integrity of Emerita Mendoza, Wendy Pérez Álvarez, Sulni Madeli Pérez Álvarez, José Oswaldo Pérez Álvarez, Jacobo Álvarez, José Pioquinto Álvarez, Alez Javier Álvarez, Germán Aníbal de la Roca Mendoza, Kevin Otoniel de la Roca Mendoza, Blanca Noelia Meléndez, Aron Álvarez Mendoza, and other next of kin of Otoniel de la Roca Mendoza who are permanently living in Guatemala.

2. To call upon the State to ado[pt], forthwith, any measures [as] necessary to guarantee that the beneficiaries of the measures cou[ld] continue living in their usual residence and respecting their rights to life and personal integrity.
3. To call upon the State to [let] the representatives of the victims participate in the planning and implementation of the protection measures and, in general, ke[ep] them informed about the progress of the provisional measures prescribed by Inter-American Court of Human Rights.
4. To call upon the State to investig[ate] the reported facts motivating the present measures with the purpose of finding the responsible parties and punish them.
5. To call upon the State to info[rm] to the Inter-American Court of Human Rights about the measures it h[ad] adopted in compliance with the [...] Order on October 10, 2003 at the latest.
6. To call upon the representatives of the victims to sub[mit] their observations about the State report within a two-week term from date of submission and to Inter.-American Commission of Human Rights which it will sub[mit] its observations within a two-week term upon notice of submission of the State report.
7. To call upon the State, after its first communication (supra operative paragraph 5), to contin[ue] informing the Inter-American Court of Human Rights, bimonthly, about the provisional adopted measures, and requi[re] the representatives of the victims to sub[mit] their observations of said State reports within a four-week term from date of submission and to the Inter-American Commission on Human Rights to subm[it] its observations within a six-week term upon notice of submission of said State reports.

19. The October 16, 2003 note to the Secretariat, wherein it required the State to submit, in compliance with the September 26, 2003 Order of the President, the report on the measures the State has adopted in compliance with said Order, whose deadline was October 10, 2003.

CONSIDERING:

1. The State of Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the obligatory jurisdiction of the Court on March 9, 1987.
2. Article 63(2) of the Convention establishes that the Court may adopt such provisional measures as it deems pertinent in matters it has under consideration and, to this end, requires that these are cases “of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons”, the Court could, in matters it has under consideration, adopt the provisional measures it deems pertinent.
3. Pursuant to the provisions of Article 25(1) of the Rules of Procedure of the Court (hereinafter “Rules of Procedure”), [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 states the duty of the States Party to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.
5. Otoniel de la Roca Mendoza was a direct witness of the Bámaca Velásquez Case (supra Having Seen 4, 5, and 6), a situation that has made that the former and his next of kin, from that moment on, have been subject to threats and other intimidating acts (infra Considering 11).

6. Particularly, as stated in this Court, “it is a State responsibility to adopt security measures to protect all persons subject to its jurisdiction, and that this duty is even more evident with respect to those involved in proceedings before the protection bodies established by the American Convention.”

7. The purpose of provisional measures, in national juridical systems (domestic procedural law) in general, is to preserve the rights of the parties to a dispute, ensuring that the Judgment on the merits (*supra* Having Seen 6) is not hindered by their actions *pendente lite*.

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

9. The present case, *Bámaca Velásquez Case*, is at the stage of supervision of compliance with the judgment by the Court; therefore, in compliance with the August 29, 2001 (*supra* Having Seen 9) Order of the Tribunal, the representatives of the victims have *locus standi* to submit their requests directly to the Court.

10. The provisional and urgent measures can also be applied during the stage of supervision of compliance with the judgment, as long as in the antecedents submitted to the Court, the *prima facie* configuration of a situation has proven extreme gravity and urgency and the imminence of irreparable damage to persons .

11. The antecedents directly submitted to the Court by the Center for Justice and International Law (CEJIL) (*supra* Having Seen 16 y 17) in the *Bámaca Velásquez Case* reveal *prima facie* a situation of extreme gravity and urgency and irreparability regarding possible damage to the rights to life and personal integrity of Emerita Mendoza, Wendy Pérez Álvarez, Sulni Madeli Pérez Álvarez, José Oswaldo Pérez Álvarez, Jacobo Álvarez, José Pioquinto Álvarez, Alez Javier Álvarez, Germán Aníbal de la Roca Mendoza, Kevin Otoniel de la Roca Mendoza, Blanca Noelia Meléndez, Aron Álvarez Mendoza and other next of kin of Otoniel de la Roca Mendoza who are permanently living in Guatemala (*supra* Having Seen 16 y 17); a situation complying with the suppositions set forth in the Articles 63(2) of the American Convention and 25(1) of the Rules of Procedure of the Court.

12. The standard of *prima facie* appraisal of a case and the application of presumptions in the light of the needs of protection, have led the Court to order provisional measures on several occasions .

13. The Inter-American Court deems necessary for the State to ensure to the above-indicated persons (*supra* Considering 11) the necessary security conditions so that they can continue living in their usual residence and without the fear of consequences on their right to life and personal integrity .

14. The September 26, 2003 Order of the President of the Court (*supra* Having Seen 18) was in accordance with the merits of the facts and circumstances and in accordance with the law, all of which justified adopting urgent measures.

15. The State has failed to submit, up to date, the urgent report required by the September 26, 2003 Order of the President on the adopted measures to ensure effectively the life and personal integrity of next of kin of Otoniel de la Roca Mendoza.

16. The provisional measures in favor of the persons indicated in the Orders of the Court on August 29, 1998, September 5, 2001, and February 21, 2003 (*supra* Having Seen 3, 10 y 15) are in force.

17. At the same time, the States Party shall comply with their conventional obligations, such as the duty to inform to the Court, in good faith (*pacta sunt servanda*) as stipulated by Article 26

of the Vienna Convention on the Law of Treaties, which codifies a basic principle of the general international law.

18. The Court points out that the State has the obligation of investigating the facts leading to the adoption of provisional measures in favor of the beneficiaries of said measures, since the State has the obligation of fighting impunity with the available legal means because this contributes to a chronic repetition of violations of human rights and a total defenselessness of the victims and their next of kin .

19. Both the Commission and the State should submit their reports and observations on provisional or urgent measures within the deadline stipulated by the Court or the President.

20. The failure of the State to inform the Court is especially serious given the juridical nature of the urgent and provisional measures seeking the prevention of irreparable damage to the persons in question in a situation of extreme gravity and urgency.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in exercise of the powers conferred on 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 all its clauses the Order of the President of the Inter-American Court of Human Rights of September 26, 2003.

2. To call upon the State to adopt, forthwith, any measures as necessary to protect the life and personal integrity of Emerita Mendoza, Wendy Pérez Álvarez, Sulni Madeli Pérez Álvarez, José Oswaldo Pérez Álvarez, Jacobo Álvarez, José Pioquinto Álvarez, Alez Javier Álvarez, Germán Aníbal de la Roca Mendoza, Kevin Otoniel de la Roca Mendoza, Blanca Noelia Meléndez, Aron Álvarez Mendoza and other next of kin of Otoniel de la Roca Mendoza who are permanently living in Guatemala as to avoid irreparable damage.

3. To call upon the State to adopt, forthwith, any measures as necessary to ensure that the beneficiaries of the present measures can continue living in their usual residence, with a due respect for their rights to life and personal integrity.

4. To call upon the State to let the representatives of the victims participate in the planning and implementation of protection measures and, in general, keep them informed on the progress of the provisional measures prescribed by the Inter-American Court of Human Rights.

5. To call upon the State to investigate the reported facts that motivated the present measures to identify the responsible parties and punish them.

6. To call upon the State to report to the Inter-American Court of Human Rights on the measures it has adopted to comply with the present Order and the Court Orders on August 28, 1998, September 5, 2001, and February 21, 2003 on December 9, 2003, at the latest.

7. To call upon the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations of the State report within a two-week term from date of submission of State report.

8. To call upon the State, after its first communication (supra operative paragraph 6), to continue informing the Inter-American Court of Human Rights, bimonthly, about the provisional

adopted measures, and require the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations of said State reports within a four-week and six-week term upon date of submission of said State reports.

9. To notify the present Order of provisional measures to the State, the Inter-American Commission on Human Rights, and the representatives of the victims and their next of kin.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez
Hernán Salgado-Pesantes
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary