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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; Maximo Pacheco-Gomez; Oliver Jackman;
Alirio Abreu-Burelli; Carlos Vicente de Roux-Rengifo
Dated: 2 December 2003
Citation: Colomina v. Venezuela, Order (IACtHR, 2 Dec. 2003)
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HAVING SEEN:

1. The Order of the President of the Inter-American Court of Human Rights (hereinafter “the President”) issued on July 30, 2003, in which he decided:

1. To call upon the State to adopt forthwith all necessary measures to protect the life, safety and freedom of expression of the journalists, Marta Colomina y Liliana Velásquez.
2. To call upon the State to allow the beneficiaries to take part in the planning and implementation of the measures of protection and, in general, to maintain them informed about progress in the measures ordered.
3. To call upon the State to investigate the reported facts that gave rise to these measures in order to identify those responsible and punish them.
4. To call upon the State to report to the Inter-American Court of Human Rights on the measures it has adopted in compliance with this Order by August 14, 2003, at the latest.
5. To call upon the Inter-American Commission on Human Rights to present the comments that it deems pertinent to the Inter-American Court of Human Rights within one week of receiving notification of the State’s report.
6. To call upon the State, following its first communication (supra fourth operative paragraph), to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and upon the Inter-American Commission on Human Rights to present its comments on the said reports within six weeks of receiving them.

2. The Order of the Inter-American Court of Human Rights (hereinafter “the Court”) issued on September 8, 2003, in which it decided:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of July 30, 2003, in its entirety.
2. To call on the State to adopt and maintain all necessary measures to protect the life, safety and the freedom of expression of the journalists, Marta Colomina y Liliana Velásquez.

3. To call upon the State to allow the beneficiaries to take part in the planning and implementation of the measures of protection and, in general, to maintain them informed about progress in the measures ordered.
 4. To call upon the State to investigate the reported facts that gave rise to these measures in order to identify those responsible and punish them.
 5. To call upon the State to report to the Inter-American Court of Human Rights on the measures it has adopted in compliance with this Order by September 15, 2003, at the latest.
 6. To call upon the Inter-American Commission on Human Rights to present the comments that it deems pertinent to the Inter-American Court of Human Rights within one week of receiving notification of the State's report.
 7. To call upon the State, following its first communication (supra fifth operative paragraph), to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and upon the Inter-American Commission on Human Rights to present its comments on the said reports within six weeks of receiving them.
- [...]

3. The brief of the State of Venezuela (hereinafter "the State") of September 15, 2003, in which it advised that the Municipal Police of Chacao "had been providing protection services to Marta Colomina, for approximately one year and seven months" and indicated the names of the persons who provide this protection. The State also mentioned that on August 5, 2003, it had sent official letters to the Ministry of the Interior and Justice, the Ministerio Público (Office of the Attorney General) and the Office of the Ombudsman, requesting that "all the necessary measures to comply with the said provisional measures" be ordered.

4. The note of the Secretariat of the Court of September 18, 2003, requesting the State to clarify whether the information it had forwarded on September 15 corresponded to the information requested in the Order of July 30, 2003, or to that requested in the fifth operative paragraph of the Order of the Court of September 8, 2003, on the provisional measures.

5. The note of the Inter-American Commission on Human Rights (hereinafter "the Commission") of October 1, 2003, forwarding the brief of the petitioners in the case, in which it indicated that the State "had done nothing to comply" with the provisional measures adopted by the Court. Likewise, it stated that no State body had contacted the beneficiaries so as to allow them to take part in the implementation of the measures, and that there was no information to indicate that the State was investigating the facts. Moreover, the petitioners explained that the continued silence of the Minister of the Interior and Justice and the Attorney General was due, at least in part, to criteria established by the Constitutional Chamber of the Supreme Court of Justice. The Chamber's case law maintained "the pre-eminence of sovereignty, which can only be derogated exceptionally, in particular and specific cases." Lastly, the petitioners requested the Court to summon the parties to a public hearing at its next session in order to assess the State's failure to comply with the provisional measures.

6. The comments of the Commission of October 14, 2003, on the State's first report in which it advised that the journalist, Marta Colomina, already had a police escort:

when the ICHR requested the provisional measures and now, three months later, Venezuela attempts to confuse the Court by affirming that it is granting the measures of protection, when the truth is that it has not complied with the Orders of the Court, requiring the State to provide adequate protection to Marta Colomina and Liliana Velásquez. The Court should also observe that the Venezuelan State's brief does not mention Liliana Velásquez, even though she was also protected by the said measures.

The Commission also indicated that "the State has not presented any information on the investigations that it was obliged to conduct," so that "the State is contributing to ensure impunity in this case." Consequently, the Commission concluded that the State "has flagrantly failed to comply with the provisional measures granted in favor of Marta Colomina and Liliana Velásquez".

CONSIDERING:

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

2. That 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 matters as it deems pertinent in matters it has under consideration and, with respect to a case not yet submitted to it, it may act at the request of the Commission."

3. That, according to Article 25(1) and 25(2) of the Rules of Procedure of the Court: At 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.

With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[...]

4. That Article 1(1) of the Convention indicates the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction.

5. 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*.

6. 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.

7. That, after examining the documents in the file on these measures, the Court considers it necessary to reiterate to Venezuela that it is the State's responsibility to adopt safety measures to protect all persons subject to its jurisdiction and that this obligation is even clearer with regard to those who are involved in proceedings before the organs of protection of the American Convention.

8. That, in its Order of September 8, 2003, the Court has already established that the facts presented by the Commission in its request reveal *prima facie* the existence of a situation of

extreme gravity and urgency for the life, safety and freedom of express of Marta Colomina and Liliana Velásquez . In the seventh operative paragraph, it also decided that “following its first communication (of September 15, 2003), [the State should] continue reporting to the [...] Court, every two months, on the provisional measures” (supra second having seen paragraph).

9. That when the Court ordered the State to adopt provisional measures in favor of Marta Colomina and Liliana Velásquez, pursuant to Article 63(2) of the American Convention, it also ordered it to provide information on the implementation of those measures (supra second having seen paragraph).

10. That the Commission has indicated that the State has not complied with the provisional measures adopted in favor of Marta Colomina and Liliana Velásquez (supra fifth having seen paragraph).

11. That, after examining the file on provisional measures, the Court has verified that Venezuela has presented information only once. Moreover, the information submitted does not reflect effective implementation of the precautionary measures requested by this Court, regarding the adoption of the measures necessary to protect the life, safety and freedom of expression of Marta Colomina and Liliana Velásquez, the participation of the beneficiaries in the planning and implementation of such measures, the investigation of the facts that gave rise to their adoption in order to identify those responsible and punish them, and the submission of the State’s reports every two months. Thus, the time limit for presenting the pending report on urgent measures expired on August 14, 2003, and for presenting the pending report on provisional measures on November 15, without either report having been received.

12. That the State has the obligation to investigate the facts that gave rise to the adoption of provisional measures in favor of Marta Colomina and Liliana Velásquez.

13. That Article 68(1) of the Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” Thus, the States must comply with their obligations under international conventions in good faith (*pacta sunt servanda*) as established in Article 26 of the 1969 Vienna Convention on the Law of Treaties, which codifies a basic principle of general international law and, as the Court has already indicated and as Article 27 of this Vienna Convention provides, a State may not invoke the provisions of its internal law as justification for its failure to respect the international responsibility that has been established.

14. That the obligation to report to the Court is not fulfilled merely by making a formal presentation of a document to the Court, but is a dual obligation, which, for effective compliance, requires the formal presentation of a document within the established time limit with specific, updated, true and detailed information on the issues to which this obligation relates

15. That the State must comply with the measures called for by the Court in its Orders and report periodically on the measures it has adopted to protect the lives, safety and freedom of expression of the persons protected by provisional measures in this case; on the investigation of the facts that gave rise to those measures, and on the steps taken to allow the petitioners to take part in their planning and implementation. The State’s obligation to report to the Court on the measures it is taking to comply with the Court’s Orders is fundamental for assessing the case.

16. That, according to Article 65 of the American Convention:

[t]o each regular session of the General Assembly of the Organization of American States, the Court shall submit, for the Assembly’s consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a State has not complied with its judgments, making any pertinent recommendations.

17. That Article 30 of the Court's Statute establishes that:
[t]he Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.

18. That, since the State has not implemented the measures ordered by the Court effectively, has not investigated the facts that gave rise to those measures, has not complied by allowing the beneficiaries to take part in the planning and coordination of the measures, and has not complied fully with its reporting obligation, should this situation persist, the Court, in application of Article 65 of the Convention (supra sixteenth considering paragraph) and Article 30 of its Statute (supra seventeenth considering paragraph), will include this Order in its 2003 Annual Report, so that it may be submitted to the consideration of the General Assembly of the Organization of American States.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Article 63(2), 65 and 68 of the American Convention on Human Rights, Article 30 of its Statute, and Articles 25 and 29(2) of the Court's Rules of Procedure,

DECIDES:

1. To reiterate that the State has not implemented effectively the provisional measures ordered by the Inter-American Court of Human Rights in the Order of September 8, 2003.
2. To declare that the State has failed to comply with its obligation under Article 68(1) of the American Convention on Human Rights.
3. To declare that the State has still not complied with the obligation to report to the Inter-American Court of Human Rights on the implementation of the measures ordered by the latter.
4. Should this situation persist, to inform the General Assembly of the Organization of American States of the State's failure to comply with the Court's decisions, in application of Article 65 of the American Convention on Human Rights, and Article 30 of the Statute of the Inter-American Court of Human Rights,.
5. To reiterate to the State the obligation to implement effectively the provisional measures ordered by the Inter-American Court of Human Rights in its Order of September 8, 2003, to protect the lives, safety and freedom of expression of Marta Colomina and Liliana Velásquez.
6. To reiterate to the State the obligation that it allow the petitioners to take part in the planning and implementation of the measures of protection and, in general, that it keep them informed about progress in the measures ordered by the Inter-American Court of Human Rights.
7. To reiterate to the State the obligation that it must investigate the reported facts that gave rise to the adoption of these provisional measures, in order to identify those responsible and impose the corresponding punishment.
8. To call on the State to report to the Inter-American Court of Human Rights on the measures that it has adopted in compliance with this Order by January 7, 2004, at the latest.

9. To call on the Inter-American Commission on Human Rights to present the comments it deems pertinent to Inter-American Court of Human Rights, within 15 days of receiving notification of the State's report.

10. To call on the State, following its first communication (supra eighth operative paragraph), to continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted and upon the Inter-American Commission on Human Rights to continue presenting its comments on the said reports with six weeks of receiving them.

11. To notify this Order to the State and to the Inter-American Commission on Human Rights.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez
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