REPORT No. 50/10[1]
PETITION 2779-02
ADMISSIBILITY
ARANZAZU MENESES DE JIMÉNEZ
COLOMBIA
March 18, 2010

I. SUMMARY

1. On August 19, 2002, the Inter-American Commission on Human Rights ("the IACHR" or "the Commission") received a petition lodged by the José Alvear Restrepo Lawyers' Collective Corporation ("the petitioners") alleging the responsibility of the Republic of Colombia ("the State," "the Colombian State," or "Colombia") in its failure to comply with the judgment handed down on February 21, 2002, by the Family and Labor Civil Chamber of the Superior Court of the Caquetá Judicial District, which affected the life and physical integrity of Aranzazu Meneses de Jiménez and her family, and in its failure to investigate and punish those responsible for the threats made against the alleged victim and for the attack she suffered on August 6, 2001, in the city of Florencia, department of Caquetá.

2. The petitioners claimed that the State was responsible for violating the right to life, to humane treatment, and to judicial protection, enshrined in Articles 4, 5, and 25 of the American Convention on Human Rights ("the Convention" or "the American Convention"), in conjunction with Articles 1.1 of that same instrument and Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. During the processing of the petition, it was expanded to include claims regarding violations of the right personal liberty, to a fair trial, and to movement and residence, enshrined in Articles 7, 8, and 22 of the American Convention, and of the right to work enshrined in Articles 6 and 7 of the Additional Protocol to the American Convention in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador").

3. In response, the State claimed that the petitioners' contentions were inadmissible on the grounds that they would be seeking to have the Commission act as a fourth instance, that there was no characterization of facts that would tend to establish violations of Articles 7 and 22 of the American Convention, and that the Commission lacked the competence to hear violations of Articles 6 and 7 of the Protocol of San Salvador. In turn, the petitioners claimed that in connection with the noncompliance with the protective judgment of February 21, 2002, they had met the requirement of prior exhaustion of domestic remedies, provided for in Article 46.1.a of the American Convention, through that ruling, and that in connection with the attack on the alleged victim and the threats made against her, more than eight years after the incident the investigations have not succeeded in identifying and punishing the guilty, triggering the exception to the prior exhaustion of domestic remedies rule established in Article 46.2.c of the American Convention.

4. After analyzing the positions of the parties and the petition's compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decided to rule the claim admissible for the purpose of examining the alleged violation of Articles 8.1, 22, and 25 of the American Convention, in conjunction with the obligations established by Article 1.1 thereof; to rule it inadmissible as regards Articles 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1.1 thereof and Articles 6 and 7 of the Protocol of San Salvador through the failure to comply with the judgment handed down on February 21, 2002, by the Family and Labor Civil Chamber of the Caquetá Judicial District Superior Court, as well as Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; to notify the parties of that decision; and to order its publication.

[1] In compliance with the terms of Article 17.2 of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in discussing or deciding this case.

II. PROCESSING BY THE COMMISSION

5. On June 6, 2002, the IACHR received a request for precautionary measures on behalf of Aranzazu Meneses de Jiménez. On June 10, 2002, the Commission asked the State to return information within the following 15 days. On July 3, 2002, the IACHR received a submission from the petitioners containing additional information on the situation of Aranzazu Meneses, which was conveyed to the State on July 10, 2002. On July 15, 2002, the State lodged a submission containing the information requested by the IACHR, which was forwarded to the petitioners for their comments.

6. On August 19, 2002, the IACHR received a petition that was recorded as No. P-2779/02 and, after conducting a preliminary analysis, the IACHR conveyed a copy of its relevant parts to the State on September 13, 2002, with a deadline of 20 days for it to return information in compliance with Article 30.4 of its Rules of Procedure. The State submitted its comments on October 11, 2002, and they were forwarded to the petitioners for their comments. On December 4, 2002, the Commission received a communication with additional information from the State, which was forwarded to the petitioners with a 15-day deadline for comments. On December 12, 2002, the IACHR received a communication from the petitioners suggesting a proposal for friendly settlement, which was conveyed to the State for its comments.

7. In response, the State requested a 30-day extension for submitting its comments, which was granted by the IACHR. On October 25, 2004, the Commission again asked the State for information. On December 16, 2005, the Commission received a comments submission from the State, which was forwarded to the petitioners for their comments. On April 6, 2009, the Commission asked the petitioners for up-to-date information on the case. On July 7, 2009, the Commission received a communication from the petitioners, which was conveyed to the State for its comments. The State submitted its comments on August 17, 2009, and they were forwarded to the petitioners for their comments. On September 4, 2009, the State submitted a communication relating to its comments submission of August 17, 2009, which was forwarded to the petitioners for comments. On September 28, 2009, the Commission received a comments submission from the petitioners, which was forwarded to the State for its comments. On November 3, 2009, the State presented its final comments.

III. POSITIONS OF THE PARTIES

A. Petitioners

8. As background information, the petitioners state that their contentions are framed by a context of aggression against health service workers in Colombia. In their submissions, the petitioners made claims regarding three situations: an attack on the victim, and threats made against her; the alleged noncompliance with a protective remedy intended to safeguard her right to security and employment; and her subsequent displacement and its consequences.

9. They claim that at the time of the incidents, there was a pattern of failing to respect the special protection afforded the medical profession and the rights of health sector workers. They state, for example, that in September 2001, the management of the María Inmaculada Hospital in Florencia, department of Caquetá, reported threats against four of its employees, including Aranzazu Meneses de Jiménez.[2] They also maintain that their claim showcases the impact of forced displacement, particularly on women.

10. First of all, the petitioners note that between 1998 and 2002, a demilitarized zone (*zona de distensión*) was established, which hosted the peace talks between the Government and the Revolutionary Armed Forces of Colombia (FARC). It comprised the municipalities of La Macarena,

[2] The petitioners cite the communication of September 13, 2001, from the manager of the María Inmaculada Hospital to the Minister of Health; petitioners' submission, received at the IACHR on July 7, 2009.

Mesetas, Uribe, and Vista Hermosa in the department of Meta, and the municipality of San Vicente del Caguán (headquarters for the talks) in the department of Caquetá.

11. The petitioners report that on August 1, 1994, Aranzazu Meneses de Jiménez assumed her position as General Services Operator at the María Inmaculada Hospital in Florencia, Caquetá department. The state that following the murder of her husband Alirio Chavarro Reyes on January 18, 2001, allegedly at the hands of paramilitary groups for "ideological and political [reasons] in the context of the internal armed conflict"[3] the alleged victim became the breadwinner for her family of three children.[4]

12. The petitioners claim that at 10:30 AM on August 6, 2001, Aranzazu Meneses was spoken to at the María Inmaculada Hospital by an unidentified man who said that he knew her because he had been a patient at that hospital. After finishing her day's work, Aranzazu Meneses was on her way home when she was accosted by the same man who, armed with a revolver, forced her into a taxi. She was then taken to another area of the city where another unidentified man was waiting for her, and who attempted to kill her by discharging a firearm at her.[5]

13. They report that Aranzazu Meneses received immediate attention at the María Inmaculada Hospital and that later, the facility manager provided her with a security detail comprising members of the security forces; because of the repeated death threats against her and her family, however, she was forced to leave Florencia.

14. The petitioners claim that on August 24, 2001, Aranzazu Meneses asked the María Inmaculada Hospital for a transfer to Bogotá "in order to continue discharging all her duties" and in that way deal with the dangers she was facing. They also claim that in a letter dated September 3, 2001, Aranzazu Meneses asked the hospital's personnel chief for one month's unpaid leave of absence on account of the present danger to her life. They report that by means of a communication dated September 17, 2001, the hospital's manager denied her request for a transfer, on the grounds that "granting the request does not depend on the will of the hospital administrators, since it is a national transfer; for that reason, this manager's office contacted the Ministry of Health […] for it to intervene and provide the appropriate protection and assistance." They state that as a result of that refusal, the alleged victim had to request three months' unpaid leave of absence.

15. They report that in a letter dated September 27, 2001, Aranzazu Meneses again contacted the hospital's management, since the three-month leave of absence was about to end; she asked them to consider extending her unpaid leave or to grant her leave of absence with pay on account of her status as a threatened person. In addition, by means of a letter dated October 5, 2001, the alleged victim asked the Ministry of Health to give a prompt response to the hospital's request for intervention, given the imminence of attacks by armed groups and the fear she had for her life. In reply the Ministry of Health said that, "it does not fall to the Ministry to resolve this case, since state social companies, in exercise of their administrative powers, should resolve the employment situations of its employees and in some way seek to resolve situations that arise in the discharge of their duties that could threaten their lives."

16. The petitioners state that the Ministry of the Interior and Justice included Aranzazu Meneses in the Special Comprehensive Protection Program for Leaders, Members, and Survivors of the Patriotic Union and of the Colombian Communist Party, on account of her position as a member, and, in that context, she was given humanitarian assistance equal to a million pesos a month for a period of three

[3] The petitioners cite the certificate issued by the municipal legal representative of Florencia on November 26, 2001; Annex 4 of the petitioners' submission, received at the IACHR on July 7, 2009.

[4] The petitioners indicate that at the time of the facts, Aranzazu Meneses had three children, aged 15, 14, and 10, who lived with her and depended on her economically. Notarized statement of Aranzazu Meneses, November 21, 2001; Annex 3 of the petitioners' submission, received at the IACHR on July 7, 2009.

[5] The petitioners claim that as a result of that attack, the alleged victim still has a bullet in her lung. Petitioners' submission, received at the IACHR on July 7, 2009.

months. They claim, however, that neither the departmental authorities or the Social Solidarity Network responded to the alleged victim's requests for protection for her life and person. As for criminal investigations, the petitioners claim that no serious and impartial investigation has been conducted.

17. In second place, they state that on October 31, 2001, Aranzazu Meneses filed a protection suit to safeguard her right to physical integrity by relocating her job to another area of the country; this filing was admitted, once a procedural defect had been resolved, on December 6, 2001. At the same time, they claim, by means of a letter dated November 29, 2001, the board of the National Trade Union Association of Health, Social Security, and Complementary Services Workers and Public Servants of Colombia (ANTHOC) contacted the María Inmaculada Hospital in Florencia to request a paid one-month union placement for Aranzazu Meneses, at that time displaced in Bogotá, to pursue a training course. They report that this request was denied by the hospital which, in a communication dated December 5, 2001, informed Aranzazu Meneses that since her unpaid leave of absence had come to an end, it was recommending that "she return immediately to her work, otherwise she would be deemed to have abandoned her post." The hospital management also said that "this administration does not have the power to relocate personnel in other departments [and] it cannot authorize union placements, as had been requested by the board of ANTHOC, since she was not a union leader."

18. The petitioners claim that on December 10, 2001, the director of the Caquetá Departmental Health Institute wrote to the alleged victim, informing her of a vacancy at the San Rafael Hospital in San Vicente del Caguán (in the former demilitarized zone), department of Caquetá. They report that the alleged victim turned down the vacancy because it was located in an area of "high social and armed conflict" and thus did not represent a solution for her security situation. As an indicator of the high levels of risk in those areas, they note that at that time leaflets were being distributed, purportedly signed by the United Self-Defense Forces of Colombia (AUC), indicating the need to, *inter alia*, "clean up" health facilities in the demilitarized zone.[6]

19. On December 14, 2001, the Second Labor Court of the Florencia Circuit in Caquetá resolved to protect the right to life and right to work of Aranzazu Meneses and ordered the manager of the María Inmaculada Hospital "within the following 48 hours […] to authorize and order [the] transfer and relocation of the worker […], a decision that will effectively safeguard protection of her right to work and right to life." It also ordered the Director of the Caquetá Departmental Health Institute, the Ministry of Health, and the Interior Ministry's General Human Rights Division to "proceed to locate the resources, provide all necessary assistance and coordination with the manager of the María Inmaculada Hospital, and order the transfer and relocation of […] Aranzazu Meneses de Jiménez, and to effectively provide the complainant with protection and resources as a threatened, displaced person, in order to safeguard her life and her work."

20. The petitioners state that in a judgment of February 21, 2002, the Family and Labor Civil Chamber of the Florencia Judicial District resolved an appeal against the first-instance decision. The judgment upheld the decision as regards most of its points and found that the orders in the judgment were only directed at the Departmental Health Institute and the María Inmaculada Hospital in Florencia. They report that on April 19, 2002, Aranzazu Meneses contacted the Caquetá Departmental Health Secretary and the manager of the María Inmaculada Hospital to secure their compliance with the protective judgment, in that the allotted period of 15 days had expired. Similarly, on May 8, 2002 the petitioners contacted the Caquetá Departmental Health Institute for the same purpose.

21. They claim that given the failure to abide by the court's decision, the alleged victim filed a suit alleging contempt of the protective ruling with the Circuit's Second Labor Court which, in a ruling of July 2, 2002, declared that the judgment had not been complied with and sentenced the manager of the María Inmaculada Hospital and the legal representative of the Departmental Health Institute to five days' arrest and a fine equal to five times the minimum legal monthly wage. Later, they state, by means of a

[6] The petitioners cite a pamphlet of the United Self-defense Forces of Colombia of December 31, 2001; Annex 20 of the petitioners' submission, received at the IACHR on July 7, 2009.

resolution dated July 5, 2002, Aranzazu Meneses was appointed to the post of General Services Operator at the Solita Health Center, Caquetá department, but this proposal was also rejected by the alleged victim because it was not compatible with her need to protect her life.

22. They report that on July 11, 2002, the Family and Labor Civil Chamber of the Caquetá Judicial District Superior Court resolved to overturn that ruling and stated that the defendant institutions were not in contempt of the order contained in the protective judgment of February 21, 2001, on the grounds that "the legal representatives made the communications ordered in the protective judgment in order to secure […] the relocation of the applicant's employment; however, in spite of the enormous efforts made beyond their spheres of jurisdiction – which is strictly curtailed to their territory – they did what was necessary to try to place her, but it was not possible."[7]

23. They claim that in December 2002 the alleged victim was offered a temporary posting at Pitalito Hospital, in the department of Huila; however, it was only a 25-day placement, with minimum earnings.[8] They claim that after working in that position, payment was not made punctually; consequently, the alleged victim sought other sources of income in her capacity as a forcibly displaced female breadwinner.[9]

24. Regarding the noncompliance with the protective sentence of February 21, 2001, the petitioners claim that the State took formal steps to implement it but that it had not, however, resolved the underlying situation of the alleged victim regarding the conservation of her job and sources of income.

25. Third, they claim that Aranzazu Meneses is currently living in the municipality of Pitalito, Huila department, without a stable source of income for satisfying her needs and those of her family. They also claim that the alleged victim lives in fear, since she reportedly received telephone threats after giving a statement to the prosecution service regarding the acts of violence that were committed against her and her family and that were reported to police authorities. Regarding the State's questioning of her forced displacement (see *infra,* III.B), the petitioners note that the alleged victim registered herself and her three children with the Sole Displaced Population Register. In addition, they claim that one of her children was excluded from the Register, with no justification given.[10]

26. Regarding the prior exhaustion of domestic remedies requirement, as set out in Article 46.1.a of the American Convention, the petitioners maintain that more than seven years have passed since the attack on Aranzazu Meneses and the threats made against her and there has been no serious and impartial investigation intended to punish the guilty; consequently, they hold that the exception to the prior exhaustion of domestic remedies rule contained in Article 46.2.c is applicable. They also maintain that those remedies were exhausted with the second-instance judgment of the Family and Labor Civil Chamber of the Caquetá Judicial District Superior Court of February 21, 2002.

27. To summarize, the petitioner contends that the State is responsible for violating the rights to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection protected by

[7] The petitioners cite the Superior Court of the Caquetá Judicial District, Family and Labor Civil Chamber, notification deed of July 12, 2002, addressed to Ms. Aranzazu Meneses; Annex 18 of the petitioners' submission, received at the IACHR on July 7, 2009.

[8] The petitioners cite San Antonio de Pitalito Departmental Hospital, State Social Company, order for the provision of services as General Services Operator, December 5, 2002; Annex 23 of the petitioners' submission, received at the IACHR on July 7, 2009.

[9] The petitioners cite the alleged victim's communication, addressed to the Human Rights and IHL Directorate, Ministry of Foreign Affairs, February 13, 2003; Annex 22 of the petitioners' submission, received at the IACHR on July 7, 2009.

[10] The petitioners cite Social Solidarity Network, document UTBs 6864 of April 25, 2002, certifying the registration of Aranzazu Meneses and her family. The petitioners claim that on requesting the benefits of Law 387 of 1997, which would have given Aranzazu Meneses's son the possibility of free education, a reply was received in document UTHU-005308 of December 20, 2005, stating that: "[…] the education letter cannot be issued to your son, Alirio Fernando Chavarro Meneses, because checking the displacement declaration reveals that you did not identify your son in the family group that was displaced." Petitioners' submission, received at the IACHR on September 28, 2009.

Articles 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Articles 1.1 thereof and Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The petitioner also holds that the State is responsible for violating the right to movement and residence set forth in Article 22 of the American Convention, in conjunction with Article 6 of the Protocol of San Salvador, in that the protective judgment ruled that there had been a violation of her right to work and that following her forced displacement, Aranzazu Meneses did not recover the stable job she had and that allowed her to maintain her family. More than seven years after the facts, the petitioner claims that Aranzazu Meneses has not seen her rights restored; no steps have been taken to address her status as a female victim of forced displacement; and the steps necessary to investigate, prosecute, and punish those responsible and to provide her with comprehensive redress have not been taken.

28. Finally, regarding the State's arguments that claims about the context should not be part of the facts and purpose of the petition (see *infra,* III.B), the petitioners contend that the description of the context in which the physical attack, threats, and forced displacement of Aranzazu Meneses took place is intended to "explain the historical and geographical circumstances and the humanitarian context related to the State's duty of prevention, to the possibilities of access to justice, and to the patterns of aggression."

B. State

29. First of all, the State notes its rejection of the petitioners' remarks about the context, holding that they "are not a part of the facts addressed in the petition and, consequently, the State's international responsibility cannot be derived or established from them."

30. Second, the State requests that the case record be closed on account of the petitioners' inactivity and because the facts of the petition no longer subsist. In addition, they ask for the petition to be ruled inadmissible since the petitioners are seeking for the Commission to act as an appeal court; since the Commission does not have competence *ratione materiae* to hear the violations of the Protocol of San Salvador alleged in the petition; and since the facts set out do not tend to establish violations of the rights enshrined in Articles 7 and 22 of the American Convention.

31. Regarding closing the record in respect of this petition, Colombia claims that the petitioners' inactivity can be seen in the fact that they have submitted no information or comments for the past three and a half years, that they have not provided evidence of the exhaustion of domestic remedies, and that they have not furnished sufficient information to allow the Commission to offer a decision on the merits. It maintains that the facts regarding the alleged attack and threats suffered by Aranzazu Meneses are unclear, that their origin, existence, and nature cannot be determined, and that the information regarding other threats made subsequently is referred to vaguely in the petition and, consequently, the State contends that "there is no evidence to indicate that they took place as described."

32. In addition, it maintains that the facts originally reported to the IACHR in 2002 no longer subsist. The State maintains that it has shown that upon learning of the alleged threats and attack suffered by Aranzazu Meneses, it began the corresponding criminal investigations. It also says that as soon as the alleged victim so requested, the State pursued administrative steps to offer her the opportunity of relocating to and working in other parts of the country, according to the possibilities then available to the State. In this regard it notes that on March 13, 2002, the hospital manager stated she had checked the availability of a vacancy for Aranzazu Meneses at other health facilities.

33. It holds that the alleged victim had access to protective action and that even before the first-instance judgment, the María Inmaculada Hospital had already begun the necessary formalities for her transfer and relocation; in spite of the actions taken, however, the departmental health secretariats and departmental governments stated "that there were no vacancies with the profile sought […] because of the elimination of positions or internal restructuring processes requiring the relocation of their own employees."[11]

34. It holds that the resolutions of the second-instance protective judgment of February 21, 2002, ordered the adoption of a decision that would protect the right to life and humane treatment of the alleged victim, and such a decision was indeed taken by the agencies. It therefore maintains that it was not possible for the State, after finding two vacancies in two areas away from where the alleged victim was employed, to be judged still in contempt. Colombia contends that is shown in the fact that on July 5, 2002, only days after the contempt ruling was issued, Aranzazu Meneses was appointed to the position of General Services Operator at the Solita Health Center in the department of Caquetá, a posting that the alleged victim also rejected. It explains that as a result of the new appointment, the contempt ruling was annulled on July 11, 2002. In light of this, the State holds that it abided by the judgments in that "the instant at which the State complies with the judge's order cannot depend on Ms. Meneses's decision, but on the steps taken by the State and the effective offering of a transfer."

35. In addition, Colombia states that on January 22, 2002, by means of document 0740, the coordinator of the Interior Ministry's Protection Group reported that Aranzazu Meneses was part of a

[11] The State maintains that on March 4, 2002, through communication OJ/DESAC/012, it contacted hospital authorities in various departments of the country, asking them to search for vacancies in line with Aranzazu Meneses's position. It reports that between March 13 and May 21, 2002, it received a total of 17 replies. State's comments submission DDH.GOI.No. 44027/2151 from the Ministry of Foreign Affairs of Colombia, dated August 14, 2009, para. 30.

group of four persons who were benefiting from that agency's protection. It reported that on August 2, 2002, the National Police in Caquetá said that it had been unsuccessful in locating the alleged victim in order to carry out a risk evaluation and that on November 6, 2002, by means of document 3775, the Protection Office and Sectional Directorate of the Administrative Security Department in Caquetá reported that it had ordered risk- and threat-level studies for Aranzazu Meneses but was unable to locate her, because she was on leave of absence away from the municipality of Florencia.

36. It also maintains that criminal investigations were begun in connection with the incidents in question, one of which is still underway. Specifically, Colombia states that the manager of the María Inmaculada Hospital filed a complaint for threats made against several individuals, including Aranzazu Meneses. It reports that following that complaint, the Seventh Sectional Prosecutor's Office opened preliminary inquiry No. 19434; however, after noting the lack of information for identifying the persons responsible, a writ of waiver was issued. At the same time, it reports that Aranzazu Meneses filed a complaint that led to the opening of preliminary inquiry No. 17964, which concluded with a writ of waiver, ordering the proceedings closed because of the failure to identify the perpetrator.

37. In addition, Colombia also states that the 92nd Specialized Prosecutor's Office of the Human Rights and International Humanitarian Law Unit is pursuing a preliminary inquiry, registered as No. 6380 (152.691), for threats made against four members of the ANTHOC trade union, including Aranzazu Meneses. It reports that in October 2001, two of the alleged victims of these threats gave statements and, in 2002, the inquiry was closed since no further information had been obtained. On May 19, 2008, the investigation was assigned to the 92nd Specialized Prosecutor's Office and, since then, various formalities have been pursued. The State reports that the investigation is at the evidence phase, no decisions on the merits have been issued, and none of the alleged victims has registered as a plaintiff.

38. At the same time, the State contends that the scant information on the alleged displacement furnished by the petitioners dates from the year 2002; thus, there are no details on Aranzazu Meneses's current situation and, according to the petitioners' claims, the alleged victim pursued none of the mechanisms available domestically for seeking redress, such as a civil action in a criminal trial, a filing for administrative redress, or the administrative redress program for the victims of illegal armed groups (Decree 1290 of 2008). In addition, it notes that the FOSYGA database and the records of the Social Security System indicate that Aranzazu Meneses has been in employment for the past few years.

39. Regarding the petition's inadmissibility, the State maintains that the Commission is competent to declare a petition admissible and rule on its merits "when it addresses a domestic judgment issued in violation of due process or in apparent violation of any other right guaranteed by the Convention. If, in contrast, it merely states that the judgment was intrinsically mistaken or unfair, the petition must be rejected in accordance with the [fourth instance] formula."[12] Thus, the State contends that the petitioners are asking the IACHR to review the judicial decision of July 2, 2002, that ruled the state agents to be in contempt, or the judicial decision of July 11, 2002, that ruled that the contempt had been remedied; in either case, it maintains, the Commission would be acting as a fourth instance.

40. It also contends that the facts as submitted offer no grounds that would tend to establish violations of the rights to personal liberty or the right to freedom of movement and residence, and so it holds that they do not tend to establish violations of the rights enshrined in Articles 7 and 22 of the American Convention.

41. The State further maintains that the Commission lacks *ratione materiae* competence with respect to the alleged violations of the right of work, protected by Articles 6 and 7 of the Protocol of San Salvador, by reason of the restriction of competence established by Article 19.6 of that Protocol; it adds,

[12] The State cites, *inter alia*: IACHR, Report No. 39/96, Petition No. 11.673, Inadmissibility, Santiago Marzioni, October 15 1996. State's comments submission DDH.GOI.No. 44027/2151 from the Ministry of Foreign Affairs of Colombia, dated August 14, 2009, para. 49.

however, that the Commission may take the Protocol into consideration in interpreting other applicable provisions of the American Convention and of other treaties over which it does have *ratione materiae* competence.[13] This notwithstanding, the State maintains that the alleged victim's right to work was not affected.

42. To summarize, the State asks the Commission to close the record in respect of this petition or, alternatively, to rule it inadmissible on the grounds that the petitioners have not exhausted domestic remedies, that the Commission would be acting as an appeal court, and that the alleged facts do not tend to establish violations of the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

43. First of all, the petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the Commission. The petition names, as its alleged victim, an individual person with respect to whom the Colombian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a state party to the American Convention since July 31, 1973, when it deposited the corresponding instrument of ratification, of the Protocol of San Salvador since December 23, 1997, and of the Inter-American Convention to Prevent and Punish Torture since January 19, 1999. The Commission therefore has competence *ratione personae* to examine the complaint.

44. In addition, the Commission has competence *ratione loci* to hear the petition, in that it alleges violations of rights protected by the American Convention, of the Protocol of San Salvador, and of the Inter-American Convention to Prevent and Punish Torture that purportedly occurred within the territory of Colombia, a state party to those treaties. The Commission has competence *ratione temporis* in that the obligation of respecting and ensuring the rights protected in the American Convention, the Protocol of San Salvador, and the Inter-American Convention to Prevent and Punish Torture was already in force for the State on the date that the incidents described in the petition allegedly took place.

45. Finally, the Commission has competence *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture. Regarding the petitioners' claims of alleged violations of Articles 6 and 7 of the Protocol of San Salvador, the Commission notes that Article 19.6 of that treaty provides that:

> Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.

46. Consequently, the IACHR lacks competence *ratione materiae* under its individual petitions system to determine, *per se,* the violations of the articles of the Protocol of San Salvador that the petitioners allege. However, bearing in mind the provisions of Articles 26 and 29 of the American

[13] The State cites Article 19.6 of the Protocol of San Salvador, which provides as follows: "6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights." It also cites: IACHR, Report No. 22/06, Petition 278-02, Admissibility, Xavier Alejandro León Vega, Ecuador, March 2, 2006; and IACHR, Report No. 44/04, Petition 2584-02, Inadmissibility, Laura Tena Colunga *et al.*, Mexico, October 13, 2004.

Convention, the IACHR may consider that Protocol in interpreting other applicable provisions of the American Convention and of other treaties over which it does have competence *ratione materiae*.[14]

B. Admissibility requirements

1. Exhaustion of domestic remedies

47. Article 46.1.a of the American Convention requires the prior exhaustion of the remedies available under domestic law, in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims regarding alleged violations of the American Convention.

48. Article 46.2 of the Convention states that the prior exhaustion of domestic remedies shall not be required when:

a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or,

c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

As the Inter-American Court has established, whenever a State claims that a petitioner has not exhausted the relevant domestic remedies, it is required to demonstrate that the remedies that have not been exhausted are "suitable" for remedying the alleged violation and that the function of those resources within the domestic legal system is applicable to protecting the violated juridical situation.[15]

49. In the case at hand, the State claims that the petition does not satisfy the requirement of the prior exhaustion of the remedies offered by domestic jurisdiction set out in Article 46.1.a of the American Convention on the grounds that a preliminary inquiry is currently underway at the 92nd Specialized Prosecutor's Office of the Human Rights and International Humanitarian Law Unit, registered as No. 6380 (152.691), for threats made against four members of the ANTHOC trade union, including Aranzazu Meneses. Colombia states that the investigation is at the evidence phase and that no decisions on the merits have yet been adopted. In addition, regarding her purported displacement, the State claims that the alleged victim pursued none of the domestic mechanisms available for seeking redress, namely: civil action in a criminal trial, a filing for administrative redress, or the administrative redress program for the victims of illegal armed groups (Decree 1290 of 2008).

50. In turn, the petitioners claim that more than seven years have passed since the attack on Aranzazu Meneses and the threats made against her, and that there is no serious and impartial investigation intended to punish the guilty. They hold that domestic remedies were exhausted with the second-instance ruling of the Family and Labor Civil Chamber of the Caquetá Judicial District Superior Court on February 21, 2002, which protected her right to life and right to work, and which was not complied with by the authorities.

51. Having seen the parties' claims, the first step is to clarify what domestic remedies must be exhausted in a case like this, in accordance with the jurisprudence of the inter-American system. The Commission notes that the petitioners' claims deal first of all with the absence of a serious and impartial investigation into the threats and attack allegedly suffered by Aranzazu Meneses; and, second, with the

[14] See, *inter alia*: IACHR, Report No. 44/04, Petition 2584-02, Inadmissibility, Laura Tena Colunga *et al*., Mexico, October 13, 2004, paras. 39 and 40.

[15] Article 31.3 of the Commission's Rules of Procedure. See also: I/A Court H.R., *Velásquez Rodríguez v. Honduras Case.* Judgment of July 29, 1988. Series C No. 4, paragraph 64.

purported noncompliance with the judgment of February 21, 2002, handed down by the Superior Court of the Caquetá Judicial District.

52. With reference to the investigation into the attack and threats, the precedents established by the Commission indicate that whenever a publicly actionable crime is committed, the State is obliged to initiate and pursue criminal proceedings[16] and that, in such cases, this is the best way to clear up incidents, prosecute the guilty, impose the applicable punishments, and enable other forms of monetary redress. The Commission believes that the petitioners' allegations regarding the attack and threats purportedly made against Aranzazu Meneses represent, under Colombian law, publicly actionable offenses that the State must investigate and prosecute; consequently, that would be the ideal remedy.

53. The Commission notes that more than eight years after the incidents described in the claim, the criminal investigation into the threats conducted by the 92nd Specialized Prosecutor's Office of the Human Rights and International Humanitarian Law Unit is still at the evidentiary phase and no individuals have been identified as criminally responsible. In addition, the record indicates that preliminary investigation No. 17964, opened following Aranzazu Meneses's complaint regarding those incidents, concluded with a writ of waiver ordering the case file closed because the perpetrator had not been identified. The State, in its claims, made no reference to the evidentiary activity pursued by the judicial authorities in preliminary investigation No. 17964 to identify those responsible. Consequently, in light of the characteristics of this case, and of the time that has passed since the events described in the petition, the Commission believes that the exception provided for in Article 46.2.c of the American Convention is applicable with respect to the delay in the domestic criminal proceedings, and that the requirement of exhausting domestic remedies is therefore not enforceable.

54. With regard to the claim alleging noncompliance with the protective judgment, the Commission notes that domestic remedies were exhausted with the second-instance decision of the Family and Labor Civil Chamber of the Caquetá Judicial District Superior Court of February 21, 2002, and so as regards this aspect of the claims the Commission finds that the requirement set in Article 46.1.a of the American Convention has been met.

55. Furthermore, the invocation of Article 46.2's exceptions to the prior exhaustion rule bears an intimate relation with the possible violation of certain rights protected by the Convention, such as its guarantees of access to justice. However, Article 46.2, by nature and purpose, is a norm with autonomous content *vis-à-vis* the substantive norms of the Convention. So, the decision as to whether the exceptions to the exhaustion of domestic remedies rule are applicable in the case at hand must be taken before the merits of the case are examined and in isolation from that examination, since it depends on a different criterion from the one used to determine whether Articles 8 and 25 of the Convention were indeed violated. It should be noted that the causes and effects that prevented the exhaustion of domestic remedies in the case at hand will be analyzed in the Commission's future report on the merits of the controversy, in order to determine whether or not the American Convention was in fact violated.

2. Filing period

56. The American Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment. In the instant case, the IACHR has admitted the exceptions to the exhaustion of domestic remedies provided by Article 46.2.c of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedure states that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, petitions must be presented within what the Commission considers a reasonable period of time. For that purpose, the Commission is to consider the date on which the alleged violation of rights occurred and the circumstances of each case.

[16] IACHR, Report No. 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, paras. 96 and 97. See also: Report No. 55/97, Case 11.137, Abella *et al.*, para. 392.

57. In the case at hand, the petition was received on August 19, 2002. As for the claim dealing with the attack on Aranzazu Meneses and the threats made against her, the events referred to in the claim began on August 6, 2001, and of the three criminal investigations opened into those incidents, two were closed under a writ of waiver on account of the failure to identify the perpetrators, whereas the third was suspended between 2002 and 2008 and, since recommencing, it remains at the evidence phase and its effects in terms of the alleged failure of the administration of justice extend into the present. According to the petition, after the death of her husband, Aranzazu Meneses suffered an attack on her life and threats, which continued even after she was displaced to the city of Pitalito in Huila department. The Commission also notes that the alleged victim pursued complementary remedies to defend her interests, which lasted until 2002. Consequently, having seen the context and characteristics of the instant case, together with the fact that an investigation is still pending, the Commission believes that the petition was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of the petition must be deemed satisfied.

3. Duplication of international proceedings and *res judicata*

58. Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the alleged facts

59. Having seen the elements of fact and law presented by the parties and the nature of the matter brought before it, the IACHR finds that as regards the alleged attack and subsequent threats, the petitioners pursued remedies related to the State's failure to take due action, which could tend to establish possible violations of the right to a fair trial and to judicial protection enshrined in Articles 8.1 and 25 of the American Convention, in conjunction with Article 1.1 thereof. The petitioners have presented no information that could establish a violation of Articles 4, 5, and 7 of the American Convention, in that the evidence submitted focuses on an alleged failure to investigate, prosecute, and ultimately punish.

60. Regarding the alleged noncompliance with the protective judgment, the record indicates that after the second-instance decision, a filing alleging that the authorities were in contempt of it was lodged with the Second Labor Court of the Circuit which, in a document dated July 2, 2002, ruled that the judgment had not been complied with and imposed penalties on the responsible authorities.[17] In that the petitioner alleges that the measures proposed to ensure compliance did not address the alleged victim's at-risk situation addressed by the ruling, on July 11, 2002, the Superior Court of the Caquetá Judicial District, Family and Labor Civil Chamber, resolved to annul that document and rule that the agencies were not in contempt of the order contained in the protective judgment of February 21, 2001.[18] It should be noted that the allegations demand a detailed analysis be conducted in light of the standards set by Article 25 of the American Convention.

61. The Commission finds that the petitioners' claim regarding the alleged violation of Articles 4, 5, 7, and 8 of the American Convention, in conjunction with Article 1.1 thereof through the failure to comply with the judgment handed down on February 21, 2002, by the Family and Labor Civil Chamber of the Caquetá Judicial District Superior Court, do not establish a violation of the rights to life, to humane treatment, to personal liberty, and to a fair trial, in conjunction with the duty of ensuring rights. Regarding Articles 6 and 7 of the Protocol of San Salvador the Commission reiterates that it lacks competence *ratione materiae* under its individual petitions system to determine, *per se,* the violations of the articles of the Protocol of San Salvador that the petitioners allege.

62. Regarding the alleged displacement, the Commission notes that having seen the context of internal displacement in Colombia and its manifestations,[19] and given the elements of fact in this petition, it must determine the State's possible responsibility for the alleged violation of the right of freedom of movement and residence enshrined in Article 22.1 of the American Convention, in conjunction with Article 1.1 thereof, in the displacement of Aranzazu Meneses.

63. With respect to Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, the petitioners' claims fail to indicate which allegations in their claim would give rise to the State's responsibility in that regard.

V. CONCLUSIONS

64. The Commission concludes that it is competent to hear the petitioners' claims regarding the alleged violation of Articles 8.1, 22, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and that those claims are admissible under the requirements established by Articles 46 and 47 of the American Convention. It also concludes that the claim must be ruled inadmissible as regards the

[17] Second Labor Court of the Labor Circuit of Florencia, Caquetá, notification document No. 581 of July 2, 2002, addressed to Ms. Aranzazu Meneses; Annex 17 of the petitioners' submission, received at the IACHR on July 7, 2009.

[18] Superior Court of the Caquetá Judicial District, Family and Labor Civil Chamber, notification document of July 12, 2002. addressed to Ms. Aranzazu Meneses; Annex 18 of the petitioners' submission, received at the IACHR on July 7, 2009.

[19] See, *inter alia*: IACHR, Annual Report 2008, Chapter IV: Colombia, paras. 74-84, available at: http://www.cidh.oas.org/annualrep/2008eng/Chap4.a.eng.htm; IACHR, Report No. 112/09, Petition 1265-06, Milene Pérez Lozano *et al*., November 10, 2009, para. 41.

alleged violation of Articles 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1.1 thereof, Articles 6 and 7 of the Protocol of San Salvador, and Articles 1, 2, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture through noncompliance with the judgment handed down on February 21, 2002, by the Family and Labor Civil Chamber of the Caquetá Judicial District Superior Court.

65. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible as regards Articles 8.1, 22, and 25 of the American Convention, in conjunction with Article 1.1 thereof.

2. To give notice of this decision to the Colombian State and to the petitioner.

3. To continue with its analysis of the merits of the complaint.

4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 18th day of the month of March, 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-president; Dinah Shelton, Second Vice-president; María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission).