

REPORT No. 94/10
DECISION TO ARCHIVE¹
PETITION 12.366
COLOMBIA
July 15, 2010

Alleged victim: Ligia Esther Garzón Pinzón
Petitioners: Ligia Esther Garzón Pinzón and the Center for Justice and International Law (CEJIL)
Alleged violations: Articles 4, 5, 8, 19, 24, and 25 in connection with Article 1.1 of the American Convention and articles 9, 10.1, 12.1, and 17 of the Additional Protocol to the American Convention in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador)
Date processing began: March 14, 2000

I. POSITION OF THE PETITIONERS:

1. On September 26, 2000 the IACtHR received a petition and a request for precautionary measures presented by Ligia Esther Garzón Pinzón and CEJIL (hereinafter "the petitioners"), which was registered as petition No. 12.366 opened for processing on March 14, 2001, based on the following facts alleged by the petitioners.

2. Beginning in 1996 the specialized prosecutor assigned to the Bogotá prosecutor's office, Ligia Esther Garzón, had pursued several cases against the Cartel of Cali and the Northern Valley in regional courts. The petitioners allege that after August 1, 1997, the date when her identity was revealed, she and her family became a target for drug trafficking groups.

3. On June 7, 1997, prosecutor Garzón was the victim of four gunshots that destroyed her jaw, tongue, and salivary glands; fractured her left arm; and caused loss of hearing in her left ear. As a result, the prosecutor was covered by the Victims' Protection and Assistance System of the National Attorney General's Office (FGN), as a victim and prosecutor, and was moved with her mother and son to Bogotá. They say that despite her relocation she was the victim of another attempted assault and continued to receive death threats against her and her family.

4. They stated that in view of the threats, in October 1997 the prosecutor was detailed to the United States for a master's study program, and was transferred there with her mother and son.

5. The petitioners said that between 1997 and 2000 the State issued four resolutions that erroneously removed Ligia Garzón from her special status as victim, witness, and prosecutor under protection, on the basis of her orders to travel abroad for a study.

6. In February 2001 the petitioners alleged that the risk factors persisted, given that the investigation into the attempt against her revealed that the order to kill her came from La Palmira prison, from a drug trafficker who was free at that time.

7. They said that the State attempted to make prosecutor Garzón return to Colombia by April 4, 2001, and resume her work, despite the government's technical security report of March 26, 2001, which certified that she had to remain outside the country because of continuing risk conditions.

¹ As provided in Article 17.2 of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in the deliberation or decision of this case.

8. They considered the State violated Ligia Garzón's rights as a prosecutor and victim by sending her abroad with no other financial support than her salary. They also argued that the State violated its obligation to respect her human dignity and the rights to health, food, and protection of the elderly established in articles 10.1, 12.1, and 17 of Protocol of San Salvador; because the Victim Assistance and Protection Office of the FGN did not provide them with adequate assistance and subsistence allowances.

9. They alleged that the State had refused to implement the precautionary measures ordered by the IACtHR in March 2001, and had insisted on prosecutor Garzón's return to Colombia, contrary to the State's security evaluations. They also considered that the security plan proposed by the prosecutor's office was inadequate, and that it had not provided medical care to the beneficiary since November 2000, despite her medical condition. Therefore, the petitioners requested that in view of the noncompliance with the precautionary measures, the Inter-American Court should be asked to order provisional measures for Ligia Garzón Pinzón, her minor son, and 19 of her closest family members.

10. They said that the State violated its obligation to guarantee Ligia Garzón's rights as a victim, witness, and prosecutor, and its obligation to prevent, investigate, and punish violations of her human rights recognized by the American Convention. They alleged that no one had been punished for the attack in the three years after it occurred.

11. They argued that Ligia Garzón was precluded from exhausting domestic remedies because she remained outside Colombia. They also alleged unwarranted delay in the investigation of the crime that began in August 1997.

12. On May 21, 2001, prosecutor Garzón submitted her resignation from the post of specialized prosecutor for security reasons, which was formalized in resolution No. 2-1590 of the Attorney General's office on June 26, 2001.

13. On August 13, 2001, the petitioners reiterated their petition to the IACtHR, calling upon it to find the State responsible for the violation of the abovementioned rights and the right to equal protection, a dignified living, social assistance, social security, rights of the child and as a woman head of the family, to the detriment of Ligia Garzón, her son, and her mother, as victims relocated abroad by the Colombian protection program..

II. POSITION OF THE STATE:

14. In its reply in the processing of precautionary measures, the State said that the only way to protect Ligia Garzón's life was to send her abroad for study, and that from 1997 to 2000 she was given a series of benefits such as payment of tuition, salary, stipends, social benefits, and guarantee for health services abroad, and that there was a series of resolutions to that effect. The State indicated that it did not refuse to adopt precautionary measures, and in view of the exhaustion of administrative tools to permit the continued absence of the prosecutor abroad as a public servant, it was necessary for her to resume her work with guarantees of adequate protection, which included a secure residence, a bulletproof car, and five bodyguards.

15. Moreover, it alleged that when prosecutor Garzón's last regular leave expired, she was offered the possibility of protection in Canada, but she was not interested in that. It alleged that the psychiatric treatment given to prosecutor Garzón had not been suspended. The State suggested alternatives to protect her rights.

16. On August 13, 2001 the State told the IACtHR about the resolution on prosecutor Garzón's resignation on May 21, 2001, and said that by mutual agreement the agreements for the study detail between Ligia Garzón and the FGN were terminated, so it asked the IACtHR to lift the precautionary measures, and considered that the facts that gave rise to the petition were remedied by the agreement between the parties.

III. PROCESSING BY THE IACHR

17. On March 14, 2001, the IACHR transmitted the relevant parts of the petition to the State for its observations. The State replied on March 16, 2001.

18. On March 28, 2001, the IACHR approved precautionary measures No. MC 183-01 on behalf of Ligia Garzón and her family to guarantee their right to life and humane treatment; to ensure their continuation in the program to protect and assist victims, witnesses, and prosecutors of the FGN; to recognize and treat Mrs. Garzón and her son as victims under the protection system; and to nullify the pertinent sections of the administrative acts that ordered her to sign agreements for a study detail; and requested the State to provide information within five days.

19. On April 3, 2001, the State submitted information on the implementation of the precautionary measures, which was forwarded on the same date to the petitioners for their observations. On April 5, 2001, the petitioners submitted their reply, which was sent to the State on April 18, 2001, for its observations. On April 24, 2001, the State presented its reply, which was forwarded to the petitioners on April 30, 2001, for their observations. On May 8, 2001, the petitioners submitted their observations.

20. On June 19, 2001, the petitioners sent the IACHR a copy of the agreement of termination by mutual consent of the study detail agreements signed by the FGN and Ligia Garzón on July 2, 2001. On August 13, 2001, the petitioners reiterated their petition. On August 23, 2001, the State requested lifting of the precautionary measures.

21. On February 18, 2005, the State asked the IACHR for a copy of the file at the request of the Administrative Tribunal of Cundinamarca for a proceeding in which Ligia Garzón was the plaintiff.

22. The IACHR deactivated MC 183-01 in view of the lack of activity in the processing.

23. In view of the time elapsed, on September 22, 2008, the IACHR inquired whether the petitioners wished to continue with the processing of the petition, as prescribed in Article 35 of its Rules of Procedure in force until December 30, 2009. On October 24, 2008, the petitioners asked for an extension of 30 days to present their reply, which the IACHR granted.

24. On July 1, 2009, the petitioners replied:

We are finding it extremely difficult to communicate with the victim and/or her family members in order to receive updated information to present to the Commission. [...] for the time being as co-petitioners we cannot comment on the matter until we have contact with the victim and/or her family members.

IV. BASIS FOR THE DECISION TO ARCHIVE:

25. Both Article 48.1.b of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the IACHR stipulate that during the proceedings of a petition, after the information has been received, or after the period established has elapsed and the information has not been received, the IACHR shall ascertain whether the grounds for the petition or communication still exist. If they do not, it shall order the record to be closed.

26. The present petition alleges violation of the rights established in articles 4, 5, 8, 19, 24, and 25 in connection with Article 1.1 of the American Convention and articles 9, 10.1, 12.1, and 17 of the Protocol of San Salvador by virtue of the State's lack of protection of prosecutor Ligia Garzón Pinzón and her family, in her capacity as prosecutor, witness, and victim of an attack because of her work as a prosecutor; and the lack of investigation and punishment of those responsible for these acts. For its part, the State reported on the implementation of precautionary measures on behalf of the prosecutor and her

family, the acceptance of prosecutor Garzón's resignation from her position, and the termination by mutual consent of the agreements on the study detail, so it considers that the facts have been remedied.

27. The Commission has no updated information since August 2001. The petitioners said they were not in a position to reply to the request for updated information made by the IACtHR in 2008. Under these circumstances, it is not possible to determine whether the grounds for the initial petition still exist, so in accordance with Article 48.1.b of the Convention and Article 42 of the IACtHR Rules of Procedure, the Commission decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 15th day of the month of July, 2010.
(Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Luz Patricia Mejía Guerrero, members of the Commission.