

REPORT No. 54/12
DECISION TO ARCHIVE
PETITION 616-04
VENEZUELA
March 20, 2012

ALLEGED VICTIM: Carlos Alberto Nieto Palma

PETITIONERS: Center for Human Rights, Catholic University Andrés Bello; Venezuelan Program for Action and Education in Human Rights (*Programa Venezolano de Educación-Acción en Derechos Humanos*, PROVEA); Episcopal Vicariate of Human Rights of the Archdiocese of Caracas; Jesuit Refugee Service; Community Learning Centers (*Centros Comunitarios de Aprendizaje*, CECODAP), Venezuela Peace and Justice Support Network (*Red de Apoyo por la Justicia y la Paz de Venezuela*, PJSN), assisted by Héctor Faúndez Ledesma (hereinafter "the petitioners")

ALLEGED VIOLATIONS: Articles 5 and 25 of the American Convention on Human Rights

PROCESSING START DATE: July 14, 2004

I. I. POSITION OF THE PETITIONER

1. On June 22 and July 5, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition for precautionary measures by the petitioners, to which the IACHR decided to request provisional measures from the Inter-American Court on Human Rights (hereinafter "Inter-American Court" or "the Court") and begin the proceedings of the petition. The petition alleged responsibility on the State of Venezuela (hereinafter "the State") for alleged threats made by agents of the State against the human rights defender, Carlos Alberto Nieto Palma (hereinafter "the alleged victim"), General Coordinator of the human rights organization "A Window to Freedom" (*Una Ventana a la Libertad*) and the lack of judicial guarantees.

2. The petitioners alleged that on June 6, 2004, three persons, including one who identified himself using an identification card as "Commissioner Rodríguez", in charge of the political police, Directorate of Intelligence and Prevention Services" (hereinafter referred to as "DISIP"), within the Ministry of the Interior and Justice, visited Carlos Alberto Nieto Palma and informed the alleged victim that they has an order to conduct a "home visit". The petitioners claimed that these visitors did not show proof of a judicial order to enter the alleged victim's home and they informed him that they merely wanted to speak with him. The petitioners also stated that upon the police officers' insistence to speak with the alleged victim inside his home, he let them enter.

3. The petitioners sustained that the alleged victim's conversation with the alleged police agents was quite strange. They contended that a significant part of the conversation concentrated on these persons demonstrating that they were aware of the alleged victim's and his family's activities. They indicated that these persons asked the alleged victim to confirm that he was a professor at the Catholic University Andrés Bello and the Central University of Venezuela (La Universidad Central de Venezuela). Similarly, the petitioners also stated that these persons asked the alleged victim questions regarding his private life, showing that they had detailed knowledge on the matter. The petitioners also contended that during the second part of the interrogation, these persons asked the alleged victim about his work as a human rights defender and the work he had conducted in prisons. The petitioners stated that the officers asked the alleged victim if he knew the political prisoners of Altamira Square, if he had defended them and for what reason. The petitioners asserted that these persons had asked the alleged victim why he had received money from the United States government to fund the "Window to Freedom". They noted

that the alleged victim felt intimidated by all of this and also because of these persons' comments regarding his nephew, "how beautiful he was", how Caracas was insecure and the risk that something could happen to him.

4. The petitioners indicated that on June 18, 2004, the alleged victim received a summons to appear "immediately" at the 27 Attorney General's Office of the Caracas Metropolitan Area, which is the reason why he went to the Attorney General's Office with his lawyers on that same day. They alleged that he had been summoned as a witness, but he was never informed what he would be a witness to or upon what the proceeding was based. They argued that Carlos Nieto Palma was interrogated about the financing of his non-governmental organization and whether he was the lawyer for the Altamira Square protesters ("*los tira piedra de Altamira*"), referring to the some youngsters who had been detained within the framework of the February 2004 protests that the alleged victim had professionally represented. They alleged that the interrogators also asked the alleged victim what money his sister was using to buy a home in the United States. The petitioners asserted that the interrogation was very violent and the Prosecutor who interrogated the alleged victim had asked him if he considered himself a national traitor. They argued that the alleged victim noted that in the morning, his computer had been working well but upon returning home, it was not longer working. They alleged that it is not known whether while the alleged victim was not home, if someone had entered his home and reviewed the content of him computer.

5. The petitioners sustained that on June 20, 2004, pamphlets had been distributed in all mailboxes of the building where he lived. They alleged that these pamphlets said: "CARLOS NIETO, WE ARE GOING TO SCREW YOU OVER, YOU WILL NEVER LIVE TO TELL ABOUT IT, WE SCREWED YOU OVER, FRIEND". The petitioners argued that this was a clear government effort to intimidate the alleged victim, which constituted a series of threats to the life, physical integrity, liberty and personal security of Carlos Nieto Palma.

6. The petitioners stated that they do not question the power and duty of the State to maintain public order and sanction those who may have committed a crime. Nonetheless, they consider that the State should not have used its administration of justice as a tool to threaten beyond the legitimate powers of the State within a democratic society. They contended that the State cannot use its criminal legislation to disqualify Carlos Nieto Palma's work that he conducted in defense of the human rights of persons deprived of liberty. They alleged that the mere insinuation -that if the alleged victim were to receive legitimate funds from international sources to conduct his legal activities in promoting and defending human rights, he would be committing an act of national treason-, represents police and judicial harassment.

II. POSITION OF THE STATE

7. The State held that based on the facts, the alleged victim filed a complaint and that on November 24, 2005, the 34 Prosecutor of the Public Prosecutor's Office, with full competence at the national level, requested the dismissal of the present proceeding before the competent Court of Control, due to that even when all the proceedings for clarification on the facts were conducted, there was a lack of material elements.

8. The State contended that during the investigation, it was not possible to demonstrate, through credible facts, the participation of an officer of the Police, whether the officer be from the DISIP or the Metropolitan Police of Caracas, in the denounced events. It alleges that during the interviews with the claimant at the Public Prosecutor's Office, in charge of the investigation, such as at the 52 Regional Command of the National Guard, the claimant incurred in a series of contradictions upon expressing "that it would be irresponsible on his part to identify one of the officers in particular as the author of the acts, when in reality he did not remember".

9. The State contended that on October 19, 2006, the 48 Court in Function of the Control of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, accepted the Public Prosecutor Office's

request and decreed the dismissal of the proceedings given that there was not sufficient evidence for legal proceedings that would allow the prosecution of any citizen.

10. Furthermore, the State held that on July 9, 2004, the Inter-American Court granted provisional measures for protection of the alleged victim and members of his family. In respect to its enforcement, the State stated that it had conducted all the proceedings in the interest of guaranteeing the effective protection of the provisional measure. The State alleged that for more than two years, it had been fulfilling such measures, using officers from the Cecilio Acosta Police Station, who were designated by the 19 Court of the Control of the First Instance Criminal Justice Circuit. It asserted that there was not any situation that presented itself that could have assumed a serious risk to the life or security of the alleged victim.

11. Taking into consideration the arguments mentioned above, the State requested the IACHR to not admit the petition.

III. PROCESSING BY THE IACHR

12. The Commission requested the Inter-American Court on Human Rights to adopt provisional measures for the protection of the alleged victim and his family, which measures the Court granted by the resolution of June 9, 2004 to protect the life, integrity and liberty of Carlos Nieto Palma, and the life and integrity of Ivonne Palma Sánchez, Eva Teresa Nieto Palma and John Carmelo Laicono Nieto.

13. The IACHR registered the petition under number 661-04 and after conducting a preliminary analysis, proceeded to transmit the petition for the State's observations on July 14, 2004. On December 29, 2004, the Commission requested additional information from the petitioner. On March 19, 2007, the State of Venezuela presented its response, which was transmitted to the petitioners for their observations on March 28, 2007. On July 3, 2007, the Court decided to lift the provisional measures of Eva Teresa Nieto Palma and John Carmelo Laicono Nieto.

14. On August 5, 2008, the Court decided to require the State to maintain the necessary measures to protect the life and personal integrity of Carlos Nieto Palma and Ivonne Palma Sánchez for a minimum of six months. On January 19, 2009, the Inter-American Court decided to lift the provisional measures, among other aspects being considered, for not having information "that demonstrates that a situation of extreme seriousness and urgency and prevention of irreparable damages subsists that existed at the moment when the provisional measures were granted" for Carlos Nieto Palma and Ivonne Palma Sánchez.

15. On June 2, 2009, the Inter-American Commission requested updated information from the petitioner and informed the petitioner that upon not receiving such information within the period of one month, the Commission could archive the petition's file. To date from the present report's approval, the IACHR has not received a response from the petitioner.

IV. BASIS FOR THE DECISION TO ARCHIVE

16. Article 48.1.b) of the American Convention on Human Rights and article 42 of the IACHR's Rules of Procedure establish that during the proceedings process of a petition, whether the Commission receives information or does not receive information after the established deadline, it will ascertain whether the grounds for the petition or communication exist or subsist and if they do not, it will order the file to be archived.

17. In the present petition, it is alleged that there were violations against personal integrity and judicial protection established in Articles 5 and 25 of the American Convention. The State sustained that the petition was inadmissible, considering that the petitioners' allegations were not characterized by the alleged violations of the American Convention.

18. In the present proceeding, the petitioner did not respond to the IACHR's two requests for information in March 2007 and June 2009. Under such circumstances, it is not possible to advance in the petition's analysis and determine if the grounds that the initial petitioner sustained subsist, which in accordance with Article 48.1.b) of the American Convention and Article 42 of the IACHR's Rules of Procedure, the Commission has decided to archive the present petition.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.