

OEA/Ser.L/V/II.157
Doc. 17
14 April 2016
Original: Spanish

REPORT No. 13/16
PETITION 942-07
REPORT ON ADMISSIBILITY

DIEGO ARMANDO PLAZAS GÓMEZ AND FAMILY
COLOMBIA

Approved by the Commission at its session No. 2063 held on April 14, 2016
157 Regular Period of Sessions

Cite as: IACHR, Report No. 13/16, Petition 942-07. Admissibility. Diego Armando Plazas
Gómez and Family. Colombia. April 14, 2016.



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ADMISSIBILITY
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I. SUMMARY

1. On July 24, 2007, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition from petitioner and alleged victim Diego Plazas Gómez, alleging the international responsibility of the Republic of Colombia (hereinafter "the State," or "Colombia," or "Colombian State") for the violation of rights enshrined in the American Convention on Human Rights (hereinafter "American Convention," or "Convention"), based on the State's failure to protect the petitioner and diligently investigate threats and acts of intimidation directed at him in retaliation for the exercise of his right to freedom of expression and community work.

2. The petition alleged that during 2005 and in January 2006, the director of the local newspaper *El Pulso*, Diego Plazas Gómez, received death threats and was followed and subjected to other acts of intimidation by unknown persons who intended to curtail the journalistic and community work he was doing in one of the poorest neighborhoods of the city of Bogotá. The petitioner asserted that, in spite of having reported these events to the competent authorities, he did not receive effective protection and was therefore forced to move from his residence and later leave the country with his family in order to ensure their safety. He further alleged that his complaints were not properly investigated.

3. For its part, the State asked this Commission to declare the petition inadmissible. It indicated that the facts set forth therein do not describe a human rights violation, because they do not involve state agents. With regard to the obligations to protect and investigate, the State maintained that it had acted with due diligence when it became aware of the threats and Diego Plazas Gómez's at-risk situation. It stated that the competent authorities took the necessary actions to provide him with the appropriate protection measures, which had reportedly been hindered by the difficulty of locating the alleged victim.

4. Without prejudging the merits of the case, after examining the positions of the parties in light of the requirements established in Articles 46 and 47 of the Convention, the IACHR decided to declare the petition admissible for purposes of examining the alleged violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 22 (Freedom of Movement and Residence), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter, "American Convention" or "Convention") in connection with Article 1.1 thereof, to the detriment of the alleged victims. The Commission additionally decided to give notice to the parties of this Admissibility Report, publish it, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

5. On July 24, 2007 the Commission received the petition and assigned it number P-942-07. On June 23, 2010, the Commission requested additional information from the petitioner telephonically, which was submitted on October 14, 2010. On June 1, 2011 the petition was forwarded to the State. On August 1, 2011, the State requested an extension, which was granted. On September 2, 2011, the State presented its observations. The Commission received additional information from the petitioner on October 20, 2012, and

¹ Commissioner Enrique Gil Botero, a Colombian citizen, did not take part in the deliberations or in the decision related to this petition, in accordance with Article 17.2.a of the Commission's Rules of Procedure.

from the State on December 22, 2012. Each one of those communications was duly forwarded to the opposing party.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. The petitioner and alleged victim stated that in 2004 he founded and directed the local newspaper *El Pulso* “to advocate for the defense of human rights in disadvantaged areas of the city of Bogotá.” He indicated that, in addition to his work at the newspaper, he was engaged in community work with town council members in various disadvantaged areas of Bogotá. He explained that his journalistic and community work was focused on the 8th district of Kennedy, a poor urban neighborhood, that reportedly had “the second highest murder rate, and was an area where urban paramilitary and guerrilla militias have taken advantage of the vulnerability and fragility of children and young people in disadvantaged areas, directly recruiting them into their ranks, or into intelligence work in the neighborhoods they control.” He stated that he actively participated in the “Working Table on Coexistence in Kennedy,” giving workshops on culture and coexistence to neighborhood youths, and served as the coordinator of the “*Mesa Pensar la Televisión*” Committee, where he had the opportunity to lead projects in the community television sector and teach workshops to young people on Human Rights and Communications. He maintains that he wrote opinion columns in the newspaper condemning the recruitment of neighborhood youths by the Urban Militias of the Capital Front of the United Self-Defense Forces of Colombia (AUC), as well as the activities of those unlawful groups in the area.

7. The petitioner indicated that his work had made him “a thorn in the side” of the irregular forces which, he said, began to intimidate and threaten him.

8. According to the petition, the journalist started receiving threats on July 30, 2005. That day, after a talk with a group of young people in the Patio Bonito neighborhood of the district of Kennedy, an unknown individual approached him and threatened him, saying “Man, quit fucking around here, stirring up the young people with your bullshit. It’s better you don’t show your face around here, man. Don’t make trouble for yourself.”

9. He stated that later, on Tuesday, August 9, 2005, after attending an activity with young people from the neighborhood, he received a call on his cell phone and an unknown man told him, “You don’t understand when you’re asked nicely, do you? So now it’s not going to be so nice, you son-of-a-bitch.” He said that on August 16, 2005, his briefcase containing journalistic material was removed from his vehicle. He indicated that the material in question concerned his investigation into the recruitment of youths in the neighborhoods of Corabastos and Sanandresito, which he was going to present to a Bogotá councilman. He said he reported the theft that same day at the E-13 Teusaquillo Police Station, stating that, because the only items taken from his car were work-related, he believed that “the motive for the theft [...] is related to [his] work as a journalist.”

10. The petitioner stated that on the night of September 2, 2005, he received another phone call in which an unknown person told him, “Look, asshole, you’re in deep shit for being a snitch. You messed with people you don’t know, and you screwed up.” He stated that after this call he filed complaints with the Office of the Prosecutor General of Colombia and the Ombudsman of the People.

11. He maintained that on September 23, 2005, he received a note in the mail with the following message: “Diego Plazas quit being such a meddling snitch, we have our eye on you and your family and your little girls go to school at [...] they get out at 2:30 your apartment is 402 building 44 your phone number is [...] and your car is red with license plate [...] so keep quiet and don’t get yourself in trouble or if you want trouble keep being a fucking pain in the ass son-of-a-bitch.” He stated that he decided to move out of the place where he was living with his family “to take refuge with some relatives.”

12. According to the allegations, it was not until October 25, 2005 that the petitioner received an official letter from the *Protection Program of the Colombian Ministry of Interior and Justice*, indicating that it

was aware of his security situation, informing him of the Protection Program, and asking him for a copy of the court proceedings related to the threats he received. The petitioner additionally stated that the letter informed him that the Administrative Security Department (DAS) would conduct a technical study "of the risk level and degree of threat in order to determine the extent of [his] vulnerability," and that the National Police had been asked to take preventive security measures.

13. According to the petitioner, he received written and verbal information on November 29, 2005 from the Commander of the Immediate Service Center (CAI Esmeralda) of the Bogotá Metropolitan Police, who reportedly told him that "by order of the Commander of the Teusaquillo Station, strategic security partnerships and police patrols must be established for [his] place of residence." They further informed him that an inspection would be performed and that CAI personnel would conduct "patrols at your place of residence, to be recorded on the inspection forms," and that "strategic partnerships [would be formed] in order to safeguard the fundamental rights of the citizen in question and his immediate relatives, thereby ensuring the free exercise of his activities."

14. The petitioner indicated that these patrols took place only once, on November 30, 2005, as recorded on the form they reportedly left with him. He alleged that although the Commander of the Teusaquillo Station "demanded strict compliance" with the measures, the patrols and inspections were not conducted with CAI personnel at his residence. He stated that when he checked with the Immediate Service Center (CAI) to see why the patrols were not being conducted, he was told that "they had lost the address of the place where [he] had taken refuge with [his] family." The petitioner underscored that the Metropolitan Police had the information about the place where he was residing, because he had given them "the address, phone number, mobile phone number, and email address at which they could locate [him]."

15. He alleged that "the irresponsible attitude of the police discouraged [him] and [he] continued to face the same risk without any protection, as evidence[d] on Tuesday, January 17, 2006," when two individuals on a motorcycle approached him in the wrong direction, against traffic, in a "suspicious action." He added that, although the motorcycle "kept going," the second individual, who was riding on the back of the bike, held a weapon in his hand, which he then put back in his jacket. The petitioner stated that, because of what happened, he provided a statement in January 2006 as part of the investigation being conducted by National Police and the Office of the Prosecutor General of Colombia.

16. He further indicated that "in view of the constant threats and intimidation," he filed a formal complaint with the Human Rights and International Humanitarian Law Unit of the Office of the Prosecutor General of Colombia on January 30, 2006. In that complaint, he reportedly reiterated the information about the threats and harassment to which he had been subjected between July 2005 and January 2006, and pointed to "members of the urban militias of the Capital Front of the United Self-Defense Forces of Colombia A.U.C." operating in the city of Bogotá, D.C. as the alleged perpetrators of those threats.

17. According to the case file, the alleged victim left the country with his wife and two daughters on February 7, 2006, "in view of the absence of guarantees for [their] safety" and decided to seek asylum abroad, which was granted in October 2007.

18. He emphasized that "[he] did his part as a citizen, which was to report" the threats, and that it was incumbent upon the State to "take action to guarantee the respective protection of [his] physical integrity." With regard to the complaint filed with the Office of the Prosecutor General of Colombia, he stated that on July 7, 2010, he requested information about his case on January 30, 2006. Nevertheless, according to the petitioner, he never received a reply to his request.

B. Position of the State

19. According to the State this petition is inadmissible because "it does not describe facts that give rise to the responsibility of the Colombian State by action or by omission, directly or indirectly." It observed that "the Office of the Prosecutor General of Colombia in its investigative work, as well as the

Ministry of the Interior and Justice, the Administrative Security Department, and the National Police, all took actions designed to provide the necessary protection to Mr. Plazas Gómez.”

20. The State also identified the various occasions on which the alleged victim contacted authorities. In particular, it indicated that the Ministry of the Interior and Justice received communications in September 2005 from the Ombudsman of the People and the editor and director of the magazine “*Bogotá, un espacio para amar*,” where the journalist was working, about his alleged situation of risk.

21. According to the State, through official letter No. 12680 of October 25, 2005, “Mr. Plazas was informed of the work undertaken by the Protection Program to assess and determine his risk level, for purposes of later submitting his case to the Committee for Risk Evaluation and Management [*Comité de Evaluación Reglamentación de Riesgos*] – CRER.” It additionally reported that instructions were issued on November 10, 2005 for the National Police to contact Mr. Plazas Gómez, thereby “providing them with the necessary cooperation through police inspections and ongoing patrols.”

22. According to the Colombian State, on December 6, 2005, the Administrative Security Department (DAS) informed the Ministry of the Interior and Justice that neither the address nor the telephone numbers provided by the alleged victim had been effective for purposes of locating him. Because of this, it indicated that it had not been possible to conduct the risk assessment. According to the Colombian State, “since that time, the Ministry of the Interior has not received any requests for protection from Mr. Plazas or staff members of the magazine ‘*Bogotá, un espacio para amar*,’ nor has it had knowledge of any facts concerning threats or the harassment of those persons.”

23. In specific reference to the plausibility of the petitioner’s claim, the State underscored that the perpetrators of the threats “were not agents of the State, nor did they act under the supervision, acquiescence, or tolerance of State agents,” and therefore argued that it cannot be held directly responsible in this case. With regard to its potential indirect responsibility, the State indicated that once it was aware of the threats received by the journalist it took the necessary actions to provide him with the appropriate protection measures, which were hindered by the difficulty in locating the petitioner.

24. As for the investigations conducted by the Office of the Prosecutor General of Colombia, the State indicated that on September 21, 2005 the National Office of Public Prosecutors was reportedly notified of the complaint that had been filed in order to initiate the respective proceedings. That investigation was carried out by the 45th District Office of the Public Prosecutor of the Unit on Crimes against Individual Liberty for the offense of threats.

25. The State argued that the efforts of the investigative authorities “were hampered by the scant information provided by the victim when he made the respective complaints.” It asserted that the impossibility of locating the alleged victim—which made it impossible to interview him about the facts alleged in his complaint—resulted in the shelving of the proceedings on April 10, 2006. It stated that the alleged victim and the Public Prosecutor had been informed of that decision in official letter No. 4699.

26. The State additionally indicated that on February 2, 2006, an investigation was opened by the 239th District Office of the Public Prosecutor of the Unit on Crimes against Individual Liberty for the offense of threats. In particular, it alleged that the petitioner had availed himself of the Inter-American System in 2007 when that criminal investigation was still active, and that “the complainant failed to provide his home address or telephone number in the complaint in order to locate him and summon him to an interview.” According to the Colombian State, that investigation was shelved on December 9, 2010, pursuant to Article 79 of the Code of Criminal Procedure.²

² Code of Criminal Procedure. Law 906 of 2004. Book I General Provisions. Title II Criminal Action. Chapter I General Provisions. Article 79. Shelving of the proceedings. When the Office of the Public Prosecutor has knowledge of an act and it has been confirmed that there are no factual reasons or circumstances that allow for it to be classified as a criminal offense, or that point to the potential existence of an offense, the proceedings shall be shelved.

27. Finally, in a subsequent communication, the State reiterated the information it previously submitted to argue that the petitioner had failed to state a colorable claim that the facts alleged constitute violations of the American Convention in this case. The Colombian State also repeated that “the petitioner’s assertion that the National Police did not act diligently is untrue,” given that, according to the State, the alleged victim and his family had left their place of residence in October 2005, and the authorities were unaware of their chosen location afterwards. Additionally, the Colombian State pointed to the patrol carried out on November 30, 2005, of which the alleged victim had been given prior notice, and asserted that Mr. Plazas Gómez “only consulted with the police officers until January 2006 with regard to the patrols conducted.”

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci*

28. According to Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner has *locus standi* to file petitions before the Commission. The alleged victims are individuals with respect to whom the State of Colombia agreed to guarantee the rights enshrined in the American Convention. With respect to the State, the Commission notes that Colombia has been a party to the American Convention since July 31, 1973, the date on which it deposited its ratification instrument. Accordingly, the Commission has jurisdiction *ratione personae* to examine the petition. In addition, the Commission has jurisdiction *ratione loci* to examine the petition because it alleges the violation of rights protected in the American Convention that reportedly took place in Colombia, a State Party to the Convention.

29. The Commission has jurisdiction *ratione temporis* insofar as the State’s obligation to respect and guarantee the rights protected in the American Convention was in force at the time the acts alleged in petition reportedly took place. Finally, the Commission has jurisdiction *ratione materiae*, because the petition alleges the violation of human rights protected by the American Convention.

B. Requirements for the Admissibility of the Petition

1. Exhaustion of domestic remedies

30. Article 46(1)(a) of the American Convention provides that for a petition submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, the petitioner must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. This requirement is intended to allow national authorities to consider an alleged violation of a protected right and, when applicable, to give them the opportunity to correct it before it is heard and decided by an international body.

31. The analysis of the requirements provided in Articles 46 and 47 of the American Convention is performed in light of the situation in effect at the time a decision is issued regarding a petition’s admissibility or inadmissibility. It often happens that, while a petition is being processed, there are changes in the status of the exhaustion of domestic remedies. Nevertheless, the petition and case system ensures that both the State and the petitioner have every opportunity to submit information and arguments with respect to the matter.³

32. The petitioner alleged that he was the victim of threats to his life and personal integrity, beginning in July 2005, in retaliation for his journalistic and community work in the Kennedy district of Bogotá, Colombia. He stated that he informed the State of the risks he was facing on several occasions, but that he did not receive effective protection. He additionally stated that he filed a formal complaint on January

³ IACHR, Report No. 15/15, Petition 374-05. Admissibility. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. March 24, 2015, para. 39.

30, 2006, which went unanswered in spite of his request for information from the Office of the Prosecutor regarding the status of his case.

33. For its part, the State indicated that, based on the petitioner's February 2, 2006 complaint, the 239th District Office of the Public Prosecutor of the Unit on Crimes against Individual Liberty opened an investigation into the offense of threats. The Colombian State explained that its investigative efforts were hindered due to the paucity of information provided in the complaint and the impossibility of locating the alleged victim. The Colombian State affirmed that the investigation was shelved in December 9, 2010 in accordance with Article 79 of the Code of Criminal Procedure, under which it may be reopened on the condition that there is new evidence, and the criminal statute of limitations has not expired. The Commission observes that the order to shelve the proceedings pursuant to Article 79 of the Code of Criminal Procedure is not subject to appeal under Colombian law.

34. The Commission reiterates that a criminal legal proceeding is the suitable process for establishing the facts, trying the perpetrators, and determining the appropriate penalties in cases involving alleged threats to life and personal integrity, in addition to making pecuniary reparations possible.⁴

35. The petitioner alleges that the complaint and the investigation that was opened did not have any effective results, and was closed without having received any information about its progress. The State, for its part, claims that it could not proceed with the investigation as it was not able to locate the petitioner. The Commission considers that the petitioner brought to the attention of the competent authorities' the alleged facts presented in the petition before the IACHR, and thus did what was within its power to invoke the domestic remedies.

36. Irrespective of the assessment that the Inter-American Commission do in the merits phase of this case with regard to the effectiveness of domestic remedies, the Commission considers that for the purposes of admissibility the petitioner complied with the requirements of Article 46 of the American Convention.

2. Timeliness of the petition

37. Article 46.1.b of the American Convention requires that the petition must be filed "within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment." The petition was submitted on July 24, 2007, one year later that the criminal investigation was initiated and while was still open. In light of the above, the IACHR concludes that the petition was filed within a reasonable period of time, and that the requirement set forth in Article 32 of the IACHR's Rules of Procedure has been met.

3. Duplication of proceedings and international *res judicata*

38. The case file does not contain any information to indicate that the subject of the petition is pending in another international proceeding, or that it duplicates a petition previously decided by the IACHR or another international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Colorable claim

39. For purposes of determining admissibility, the Inter-American Commission must decide whether the alleged facts amount to a violation of the rights enshrined in the American Convention pursuant to the requirements of Article 47(b), or whether the petition is "manifestly groundless" or "obviously out of order," as described in Article 47(c). The criterion for examining admissibility differs from the one used to examine the merits, as the Commission only performs a *prima facie* evaluation to determine whether the

⁴ IACHR. Report No. 99/09. Petition 12.335. Gustavo Giraldo Villamizar Durán. Colombia. October 29, 2009, para. 33.

petitioners establish the apparent or potential violation of a right guaranteed in the American Convention. This is a summary analysis that does not entail prejudgment or a preliminary opinion on the merits of the case.

40. Additionally, neither the American Convention nor the IACHR's Rules of Procedure require petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although they may do so if they wish. It falls to the Commission, on the basis of the system's jurisprudence, to determine in its reports on admissibility which provisions of the pertinent inter-American instruments are applicable, and the violation thereof may be established if the facts alleged are demonstrated with sufficient evidence.

41. The petition alleged that during 2005 and in January 2006, the director of the local newspaper *El Pulso*, Diego Plazas Gómez, received death threats and was followed and subjected to other acts of intimidation by unknown persons who intended to curtail the journalistic and community work he was doing in one of the poorest neighborhoods of the city of Bogotá. The petitioner asserted that, in spite of having reported these events to the competent authorities, he did not receive effective protection and was therefore forced to move from his residence and later leave the country with his family in order to ensure their safety. He further alleged that his complaints were not properly investigated.

42. The State, for its part, maintained that the perpetrators of the threats "were not agents of the State, nor did they act under the supervision, acquiescence, or tolerance of State agents," and therefore argued that it cannot be held directly responsible in this case. With regard to its potential indirect responsibility, the State indicated that once it was aware of the threats received by the journalist it took the necessary actions to provide him with the appropriate protection measures, which were hindered by the difficulty in locating the petitioner.

43. In view of the legal and factual elements presented by the parties and the nature of the matter brought before it, the Commission finds that, if proven, the petitioner's allegations of State responsibility for the facts set forth in the petition could potentially constitute a violation of the rights enshrined in Articles 5, 8, 13, 22, and 25 of the American Convention. In addition, the IACHR declares this petition admissible in relation to the State's possible noncompliance with the general obligations enshrined in Articles 1.1 of the Convention.

44. In conclusion, the IACHR finds that this petition is neither "manifestly groundless" nor "obviously out of order," and therefore declares that the petitioner has met *prima facie* the requirements established in Article 47.b. of the American Convention with respect to potential violations of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 22 (Freedom of Movement and Residence), and 25 (Right to Judicial Protection) of the American Convention. In addition, the IACHR declares this petition admissible in relation to the State's possible noncompliance with the general obligations enshrined in Articles 1.1 of the Convention, as previously described.

V. CONCLUSIONS

45. Based on the foregoing legal and factual considerations, the Inter-American Commission concludes that this case meets the admissibility requirements contained in Articles 46 and 47 of the American Convention, and therefore, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with respect to Articles 5, 8, 13, 22, and 25 of the American Convention, in conjunction with Article 1.1 thereof;
2. To provide notice of this decision to the parties;
3. To continue with the analysis of the merits of the case; and

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

Done and signed in the city of Washington, D.C., on the 14th day of the month of April, 2016. (Signed): James L. Cavallaro, President; Francisco Eguiguren Praeli, First Vice-president; Margarete May Macaulay, Second Vice-president; José de Jesús Orozco Henríquez, y Esmeralda Arosemena de Troitiño, Commissioners.