

Press Release

Inter-American Court of Human Rights

I/A Court H.R._PR-140/2020 English

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I/A Court H.R.

Protecting Rights

COLOMBIA IS RESPONSIBLE FOR VIOLATING THE GUARANTEE OF STABILITY THAT PUBLIC PROSECUTORS SHOULD BE RECOGNIZED AS JUSTICE OPERATORS

San José, December 14, 2020.- In the Judgment notified today in the Case of Martínez Esquivia v. Colombia, the Inter-American Court of Human Rights found the State of Colombia responsible for the Arbitrary dismissal of Mrs. Yenina Esther Martínez Esquivia from her position as Deputy Prosecutor before the Criminal Courts of the Cartagena Judicial Circuit. The official summary of the Judgment can be consulted [here](#) (Only in Spanish) and the full text of the Judgment can be consulted [here](#) (Only in Spanish).

Mrs. Martínez Esquivia worked as a Deputy Prosecutor provisionally for more than 12 years. On October 29, 2004, the Attorney General of the Nation issued a resolution declaring her appointment unsubstantiated without any motivation.

In this Judgment, the Court, taking into account the nature of the function of prosecutors, considered that they should be protected by guarantees that assured their independence and objectivity. The Court specified that, like judges, prosecutors are covered by the guarantee of stability, which implies the following protective mechanisms: a) the removal from office must exclusively obey to restrictive grounds, either through a process that complies with judicial guarantees or because the term or period of their mandate has been fulfilled; b) that prosecutors can only be dismissed for serious disciplinary offenses or incompetence, and c) that all proceedings against prosecutors should be resolved through fair, objective and impartial procedures according to the Constitution or the law, since the free removal of prosecutors encourages suspicion about the effective possibility of those to exercise their functions without fear of reprisals.

With regard to provisional appointments, the Court observed that this provisionally should not imply any alteration of the guarantee's regime for the proper performance of its function and the safeguarding of the defendants themselves. In any case, the provisionally must not be extended indefinitely in time and must be subject to a resolute condition.

These guarantees were not observed in the separation of Mrs. Martínez Esquivia, for which reason Colombia was considered responsible for the violation of Article 8.1 of the Convention. In the same way, it was considered that the unsubstantiated nature of the administrative act transformed this act of dismissal into an arbitrary act, by unduly affecting her right to stability in office, for which, in addition, it was a violation of the right to have access, under general conditions of equality, to the public service, protected by Article 23.1.c of the Convention.

The Court also considered that the State did not provide Mrs. Martínez Esquivia with an effective remedy to protect this guarantee of stability, for which it declared Colombia's responsibility for violation of the right to judicial guarantees and the right of judicial protection.

Finally, the Court concluded that Colombia violated the guarantee of a judgement in reasonable time, having taken almost four years to resolve the appeal before the labor jurisdiction.

In this case, the Court ordered various measures of reparation.

Judge Eduardo Ferrer Mac-Gregor informed the Court of his reasoned opinion.

The composition of the Court for the delivery of this Judgment was as follows: Judge Elizabeth Odio Benito, President (Costa Rica); Judge Patricio Pazmiño Freire, Vice President (Ecuador); Judge Eduardo Vio Grossi (Chile); Judge Eduardo Ferrer Mac-Gregor (Mexico); Judge Eugenio Raúl Zaffaroni (Argentina), and Judge Ricardo Pérez Manrique (Uruguay). Judge Humberto Antonio Sierra Porto, a Colombian national, did not take part in the deliberation and signature of this Judgment, pursuant to Article 19(1) and 19(2) of the Court's Rules of Procedure.

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