

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 16/2014
PRECAUTIONARY MEASURE No. 204-14¹
Matter of John Winfield regarding the United States of America
June 6, 2014

I. INTRODUCTION

1. On June 4, 2014 the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a request for precautionary measures presented by the American Civil Liberties Union (hereinafter "the applicants"), in favor of John Winfield (hereinafter "the proposed beneficiary"), United States citizen of African American ethnicity, sentenced to the death penalty on charges of murder and attempted murder. According to the petitioners, the execution is scheduled to take place on June 18, 2014 at 12:01 am in the state of Missouri, United States. The application was submitted in the context of individual petition P-815-14, which alleges violations of the "right to life (Article I), the security of person and freedom from cruel, infamous or unusual punishment (Article XXVI), and the rights to a fair trial and due process (Articles XVIII, XXVI)" of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration" or "the Declaration"). Applicants request the Commission to require the United States of America (hereinafter "the State," "United States" or "U.S.") to stay the execution of the proposed beneficiary until the IACHR has pronounced on their petition so as not to render ineffective the processing of their case before the Inter-American system.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that if John Winfield is executed before it has an opportunity to examine this matter, any eventual decision would be rendered moot in respect of the effectiveness of potential remedies, resulting in irreparable harm. Consequently, pursuant to Article 25(1) of its Rules of Procedure, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of John Winfield until the IACHR has pronounced on his petition so as not to render ineffective the processing of his case before the Inter-American system.

II. BRIEF SUMMARY OF THE INFORMATION AND ARGUMENTS PROVIDED BY THE APPLICANTS

3. According to the request filed by the applicants, John Winfield is currently being held at the "Potosi Correctional Center" in Mineral Point, Missouri. Applicants report that the proposed beneficiary had been "*sentenced to death in 1998.*" Applicants inform that the proposed beneficiary's "*state direct appeal, state post-conviction, and federal habeas claims*" were denied. According to the applicants, "*plaintiffs' writ of certiorari to the United States Supreme Court was also denied.*" Indeed, a group of Missouri death row inmates, including the proposed beneficiary, filed a federal civil action (*Zink v. Lombardi*) challenging Missouri's execution protocol as unconstitutional. Among the major claims, they denounced that Missouri's protocol "*[...] violated the Eighth Amendment's prohibition on cruel and unusual punishment, that the use of secretively made and unregulated execution drugs increased the*

¹ In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner James Cavallaro, a United States national, did not participate in the deliberation or vote on this precautionary measure.

prisoners' punishment in violation of the Ex Post Facto Clause, and that the protocol's secrecy provisions violated the First Amendment as well as the prisoners' right of access to the courts." On May 9, 2014, the Missouri Supreme Court set his execution date for June 18, 2014. On June 2, 2014, the proposed beneficiary requested a stay of execution in the Eighth Circuit, pending the appeal of the dismissal of the Zink constitutional claims. Nonetheless, applicants express serious concern because the State of Missouri has already executed three plaintiffs regardless of the fact that their litigation was pending for final decision. So, applicants indicate that they are afraid that the same could happen to the proposed beneficiary.

4. Applicants question the state of Missouri's method of execution because it allegedly violates *"the prohibition of cruel and unusual punishment by barring [people to be executed] from knowing what the method is."* Applicants allege that the state of Missouri plans to execute the proposed beneficiary by using its current method of "compounded pentobarbital," whose *"efficacy depends on its purity and concentration."* In this regard, applicants report that *"[t]he Missouri Department of Corrections refuses to disclose any information about the drug's safety, purity, and will not even confirm whether the drug is subject to any laboratory testing at all."* Additionally, applicants indicate that the procedure by which the state acquires pentobarbital is carried out in the *"absence of any regulation or accountability."*

5. Applicants assert that the use of pentobarbital in other states has caused prisoners to gasp heavily, snore loudly with open eyes, their skin to turn purple, and to feel burning before they die. According to applicants, *"an expert pharmacologist has described this reaction as consistent with contaminated drugs."*

6. The Missouri execution protocol would also allow carrying out executions by using *"a central venous line (femoral, jugular, or subclavian)."* With respect to this method, applicants state that it is inherently invasive and can cause different complications such as *"suffocation by collapsed lung; perforation or laceration of large blood vessels leading to severe and fatal hemorrhage,"* among others complications.

7. In the case of the proposed beneficiary, applicants argue that if executed by the compounded pentobarbital method, he could face a *"threat of cruel, inhuman, or degrading treatment and even torture."* Based on previous executions, applicants allege that there is a very substantial risk that the proposed beneficiary *"will suffer excruciating, even torturous, pain during the execution."*

8. In the individual petition to which this request for precautionary measure is connected, applicants allege that the execution of the proposed beneficiary by the method of compounded pentobarbital would violate Articles I (right to life), XXVI (the security of person and freedom from cruel, infamous or unusual punishment), XVII (right to a fair trial) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

9. The mechanism of precautionary measures is part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter, and in the case of Member States that have yet to ratify the American Convention on Human Rights, those set

forth in the American Declaration of the Rights and Duties of Man. These general oversight functions are set forth in Article 18 of the Commission's Statute, and the mechanism of precautionary measures is detailed in Article 25 of the Commission's Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

10. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "I/A Court H.R.") have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, the measures have the purpose of preserving a legal situation while being considered by the IACHR. The precautionary nature aims to preserve those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered.

11. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedures, the Commission considers that:

- a. "serious situation" refers to the grave impact that an action or omission can have on a protected right or on the eventual effect on a pending decision in a case or petition before the organs of the Inter-American system;
- b. "urgent situation" refers to a risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

12. The present request for precautionary measures seeks to protect the right to life of John Winfield, who in 1998 was sentenced to death on charges of murder and attempted murder, and could be executed on June 18, 2014, in the state of Missouri, United States. The request for precautionary measures is related to individual petition P-815-14, in which applicants allege violations of Articles I (right to life), XVII (right to a fair trial), and XXVI (the security of person and freedom from cruel, infamous or unusual punishment, and the right to due process of law) of the American Declaration of the Rights and Duties of Man.

13. In the present matter, the requirement of seriousness is met, in its precautionary and protective aspects; the rights involved include primarily the right to life and the security of the person and freedom from cruel, infamous or unusual punishment under Articles I and XXVI, respectively, of the American Declaration in relation to the risk resulting from the possible application of the death penalty in the state of Missouri, United States. In this regard, it has been alleged that the eventual method of

execution of the proposed beneficiary by using compounded pentobarbital does not observe the rights protected under the international law of human rights, particularly the rights to life, security of the person and freedom from cruel, infamous or unusual punishment, and judicial protection under Articles I, XVIII, XXV and XXVI of the American Declaration. Further, applicants maintain that the carrying out of the execution as scheduled would obstruct the right to file this petition before the IACHR contained in Article 30.3 of the Rules of Procedure and have it duly considered.

14. Regarding the requirement of urgency, the Commission notes that John Winfield could be executed on June 18, 2014, in the state of Missouri, United States. Accordingly, the Commission could be in a position in which it would be unable to complete an assessment of the allegations of violations of the American Declaration submitted in his petition prior to an eventual execution of the proposed beneficiary. Consequently, the Commission deems the requirement of urgency satisfied as it pertains to a timely intervention, in relation to the immediacy of the threatened harm argued in the request for precautionary measures.

15. Concerning the requirement of irreparability, the Commission deems the risk to the right to life to be evident in light of the possible implementation of the death penalty; the loss of life imposes the most extreme and irreversible possible situation. Regarding the precautionary nature, the Commission considers that if John Winfield is executed before the Commission has an opportunity to examine this matter, any eventual decision would be rendered moot in respect of the efficacy of potential remedies, resulting in irreparable harm.

16. Under Article 25.5 the Commission generally requests that the State concerned present information prior to taking its decision on a request for precautionary measures, except in a matter such as the present case where the immediacy of the potential harm allows for no delay.

IV. DECISION

17. In view of the above-mentioned information, taking into account the human rights obligations of the United States as a Member State of the OAS; and as part of the Commission's function of overseeing Member State compliance with the human rights obligations set forth in the OAS Charter, and in the case of Member States that have yet to ratify the American Convention on Human Rights, those of the American Declaration of the Rights and Duties of Man; the Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests the Government of the United States to abstain from executing John Winfield until the IACHR has ruled on the merits of the individual petition filed on his behalf.

18. The Commission also requests the Government of Your Excellency to report, within 3 days from the date of this resolution, on the adoption of the precautionary measures required and update such information regularly.

19. The Commission emphasizes that, according to Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State shall not constitute a prejudgment on any possible violation of the rights protected in the American Declaration and other applicable instruments.

20. The Commission orders the Secretariat of the Inter-American Commission to notify the Government of the United States and the applicants of this resolution.

21. Approved on the 6 days of June, 2014 by: Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; Commissioners Jesús Orozco, Rosa Maria Ortiz, and Paulo Vannuchi.

A handwritten signature in black ink, appearing to read 'Lili M. Romero-Desimone', with a colon to its right.

Lili M. Romero-Desimone
By authorization of the Executive Secretary