
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 15/2022**

Precautionary Measure No. 209-07
Carlos Mario Gómez Gómez regarding Colombia¹
March 14, 2022
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Carlos Mario Gómez Gómez, in Colombia. At the time of making the decision, the Commission notes that the State has requested that this matter be lifted. The Commission assessed the actions taken by the State to implement these measures and the information provided by the representatives. Having analyzed the information available, the IACHR considered that there are no sufficient elements to continue identifying compliance with the procedural requirements. In its assessment, the IACHR observed that there is no dispute between the parties that Mr. Gómez has recovered his freedom, so the factual circumstances that called for the granting of the precautionary measures have changed significantly.

II. BACKGROUND INFORMATION

2. On November 19, 2007, the Commission granted precautionary measures in favor of Mr. Carlos Mario Gómez Gómez, in Colombia, under the representation of Juan Bautista Rendón Ortiz. According to the request, Mr. Gómez was deprived of his liberty and was allegedly threatened by police officers. It was reported that on October 13, 2007, he was shot and seriously wounded in the Bellavista prison. It was further indicated that on November 1, 2007, he was transferred to the Itagüí detention center, where the person who was allegedly responsible for the attack against him was located. It was further alleged that, despite the injuries he sustained, the beneficiary was reportedly confined to a cell floor without proper sanitary conditions, which entails a serious health risk.²

3. Upon analyzing the information furnished, the Commission considered that Mr. Carlos Mario Gómez Gómez was *prima facie* in a serious and urgent situation, given that his rights to life and physical integrity were purportedly at risk. Consequently, the Commission requested that the State of Colombia adopt the necessary measures to guarantee the life and physical integrity of Mr. Gómez Gómez, and to report on the actions taken in order to conduct a judicial inquiry into the facts that gave rise to the adoption of precautionary measures.³

III. INFORMATION PROVIDED DURING THE TIME THE MEASURES WERE IN FORCE

4. During the time the precautionary measures were in force, the Commission has followed-up on the situation that is the subject matter of these precautionary measures by means of requesting information from the parties. On February 1, 2012, the Commission requested information from the representatives. On February 9 and March 19, 2012, the representatives responded. On April 4, 2012, the Commission forwarded the information to the State. On the same date, the Commission requested additional information from the representatives. On April 16 and 19, 2012, the beneficiary contacted the

¹ In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the debate and deliberation of this matter.

² IACHR. Precautionary Measures 2007. Available at <http://www.cidh.org/medidas/2007.eng.htm>.

³ Ibid.

Commission again. On May 9, 2012, the State presented information. On August 13, 2012, the Commission forwarded the corresponding information between the parties. On September 6, 2012, the State requested a timeline extension, which was granted on September 12, 2012. On September 11, 2012, both the representatives and the State provided information. On September 23, 2012, the representatives presented information. On December 3, 2012, the Commission correspondingly forwarded the information. On January 3, 2013, the representatives presented information. On January 11, 2013, the State requested two timeline extensions which were granted on January 15 and February 20, 2013. On February 26, 2013, the representatives presented information. On April 30, 2013, the State sent additional information.

5. On June 10, 2013, the representatives provided additional information. On August 16, 2013, the State provided additional information. On September 6, 2013, the Commission forwarded the State's report to the representatives. On September 20, 2013, the beneficiary presented additional information. The Commission forwarded the information to the State on September 27, 2013. On November 21, 2013, the State provided additional information. On December 6, 2013, the Commission forwarded the beneficiary's report to the State. On January 3, 2014, the State requested a timeline extension, which was granted on January 14, 2014. On January 16, 2014, the State provided additional information. On February 11, 2014, the Commission forwarded the State's response to the representatives.

6. On October 9, 2015, the Commission requested that the representatives provide further information on the beneficiary. On November 18, 2015, the representatives provided additional information. On January 25, 2017, the Commission requested additional information from the State. On February 16 and August 14, 2017, the State provided additional information. On August 23, 2017, the representatives provided additional information. On August 30, 2017, the Commission requested updated information from the State. On September 21, 2017, the Commission forwarded the corresponding information between the parties. On November 3, 2017, the State presented the information. On February 15 and March 16, 2018, the beneficiary contacted the Commission. On March 16, 2018, the Commission forwarded the information to the State. On April 21 and July 4, 2018, the representatives contacted the Commission. On August 22, 2018, the Commission forwarded the information to the State.

7. On September 11, 2020, the State requested that the precautionary measures be lifted. On November 9, 2018, the Commission forwarded the request to the representatives. On November 20, 2018, the State reiterated its request to have the measures lifted. On January 24, 2019, the beneficiary provided additional information. On September 11 and December 3, 2020, the State once again requested the lifting of the precautionary measures. On January 8, 2021, the beneficiary contacted the Commission. On January 12, 2021, the Commission forwarded the report presented by the State to the representatives. On March 3 and April 29, 2021, the State reiterated its request for precautionary measures. On May 12, and November 16, 2021, the representatives sent a communication to the Commission. On June 17, September 27 and December 7, 2021, the State reiterated its request to lift the precautionary measures.

A. Information provided by the State

8. In 2012, the State provided the following information:

- On May 9, 2012, it was indicated that the beneficiary had access to medical care, which took the form of 22 consultations between 2007 and 2012. At a consultation on February 9, 2012, the beneficiary was diagnosed with a chronic headache and was issued a prescription. He states that the Health Promotion Entity (*Entidad Promotora de Salud, EPS*) CAPRECOM was ordered to comply with the treatment ordered in favor of the beneficiary as well as deliver the corresponding medication. Subsequently, the EPS METROSALUD was responsible for their health care. A disciplinary investigation was requested to identify the person who was responsible for losing the beneficiary's medical record.

- Communications continued with the competent authorities to establish the actions that had to be taken in order to ensure the safety of the beneficiary's food.
- Information on a disciplinary investigation to determine how the firearm was brought into the prison and two criminal investigations aimed at determining the individuals who attacked the beneficiary and attempted to murder him.
- On September 11, 2012, the State reported that the beneficiary was transferred to Annex 2 of the penitentiary for security purposes.
- On April 23, 2012, the Human Rights Consul of the Itagüí Operations and Establishment Branch (*Cómsul de Derechos Humanos de la Subdirección Operativa y del Establecimiento de Itagüí*) met with the beneficiary to verify his detention conditions and update his security situation. At the meeting, the beneficiary was informed that whenever he had problems he could contact the Consul, and the guards were instructed to serve the beneficiary his food first. The INPEC Human Rights Group will be monitoring the situation of the beneficiary on a regular basis and the prison received orders to take all necessary measures to guarantee his rights. An official communication on July 3, 2012, reported that the director of the detention facility gave orders for the beneficiary to be inspected daily for physical and habitability conditions. The Human Rights Consul regularly monitored the beneficiary's situation.

9. In 2013, the State provided the following information:

- Since January 2013, daily visits were carried out to monitor the beneficiary's situation. On April 30, 2013, it was reported that the beneficiary's medical condition was stable and that he was under general medical monitoring, as he was assessed on multiple occasions. On February 4, 2013, the beneficiary had a medical appointment with the ophthalmologist and on February 5, 2013, he was provided with extramural medical care. All prescribed medications were reportedly delivered to the beneficiary. There were no alleged interruptions or withholdings during the delivery or distribution of prescription medication.
- After the loss of the beneficiary's medical record had been reported, the Itagüí prison stated that the beneficiary's medical record had been found.
- While inmates are not authorized to prepare their own meals, the beneficiary had a low-fat diet and an appointment was arranged with a nutritionist to monitor the beneficiary's diet. The penitentiary establishment reportedly did not have the infrastructure for inmates to prepare their own meals.
- A meeting for following-up and agreeing upon precautionary measures in favor of the beneficiary was carried out on August 8, 2013.⁴ At the meeting, the beneficiary emphasized that he has not received direct threats and that his concern is that people with vices or suspicions enter his cell.
- The Itagüí Penitentiary Establishment was setting up an area where the beneficiary could be alone. However, it was specified that the area where the beneficiary is currently located has proper security conditions.
- The Human Rights Consul was responsible for monitoring the beneficiary.

10. On January 16, 2014, the State stated that the investigation for the crime of attempted homicide against the beneficiary has a final judgment of conviction. Another investigation where the beneficiary is listed as a victim ended in preclusion for two of the three accused. It was concluded that they did not participate in the events and there was a resolution of dismissal for the other accused as it was concluded that their conduct was atypical.

11. In 2017, the State reported the following:

- The beneficiary was transferred to the La Paz prison in Itagüí and that the beneficiary has not filed further complaints since his transfer.

⁴ With the participation of the beneficiary, his lawyer, the Human Rights Consul, INPEC officials, the Ministry of Justice and Law, the Attorney General's Office, and the Human Rights Directorate of the Ministry of Foreign Affairs.

- On December 1, 2016, a meeting was held with the beneficiary to address his situation. In addition, an inter-institutional meeting was held on June 2, 2016, in which a new medical and diet assessment was recommended to the beneficiary.
- On February 16, 2017, a risk assessment was carried out and resulted in an “ordinary” risk. However, despite this qualification, the prison director was instructed to maintain preventive measures to guarantee the life and protection of the beneficiary.
- On July 19, 2016, the beneficiary was transferred to the University IPS for an assessment with a general surgeon. He was referred for a neurosurgical assessment. On September 21, 2016, the beneficiary had the appointment in Neurosurgery.
- On August 9, 2017, the beneficiary underwent a medical assessment. The result of the diagnosis showed a healthy patient.
- In the prosecution for the crime of attempted homicide against the beneficiary, the accused accepted the charges and was sentenced to five years and six months in prison by judgment on October 31, 2008.
- On August 9, 2017, a delegate of the Judicial Police of the Establishment met with the beneficiary to discuss his safety. The beneficiary allegedly stated that he had not received any physical assaults or threats. The beneficiary indicated that he felt endangered by “self-perception” and not by threats he had received.

12. On November 3, 2017, the Third Criminal Court of the Specialized Circuit of Medellín (*Juzgado Tercero Penal del Circuito Especializado de Medellín*) acquitted the beneficiary of the crime of simple kidnapping, as well as the crime of qualified and aggravated theft and ordered his immediate release. However, the Third Court for the Execution of Sentences and Security Measures of Medellín (*Juzgado Tercero de Ejecución de Penas y Medidas de Seguridad de Medellín*) reported that the beneficiary was being held in detention serving a sentence of 30 years and 6 months imposed by the Superior Court of Antioquia. As a result, the beneficiary continued to be held in the Itagüí Prison.

13. Lastly, on September 19, 2018, the State provided additional information which states that the beneficiary was released on June 21, 2018. The beneficiary underwent an exit medical examination and a vehicle was authorized to enter the premises for the beneficiary’s exit. Between 2018 and 2021, the State reiterated its request to lift the precautionary measures.

B. Information provided by the representatives

14. The representatives considered that the State has not implemented the precautionary measures. On February 9, 2012, the representatives stated that the beneficiary was being held in a cell with six other people, when the maximum capacity of the cell is of four people. The beneficiary also stated that, on multiple occasions, the alleged perpetrator of the attack that aimed to murder the beneficiary was transferred to the courtyard where he was currently located. They indicated that the threats against him were ongoing. Regarding his health, the beneficiary stated that he had such severe headaches that they allegedly sometimes caused him to vomit, lose hearing and experience ear pain. He reported his dissatisfaction with his diet and reportedly requested to be able to prepare his own food. The representatives indicated that there were “irregularities” in the criminal proceedings in which he was involved, and that these led to his conviction. On April 16, 2012, the INPEC members allegedly lost his medical records. On March 26, 2012, the beneficiary allegedly heard inmates share that the person who had planned the attack and had planned to kill him had said that “they had to finish the job, no matter where he was.” The beneficiary indicated that he had medical appointments, but called into question the delay in having the medication delivered.

15. On January 3, 2013, the representatives reported that the beneficiary was in Annex 2. He reported on the medical care he received and on the medications that were prescribed and delivered. It was indicated that the director gave the order to check on him every day. On February 26, 2013, the representatives stated that he had been removed from the prison three times for medical examinations.

The representatives presented concerns regarding food and family visits. They reported that the Human Rights Consul with whom the beneficiary was meeting was transferred and that an INPEC official was instructed to carry out the meetings with the beneficiary. The criminal investigation into the attack against the beneficiary resulted in the conviction of the person who shot him. On February 26, 2013, the beneficiary indicated that the State did not want to hear the complaints regarding incidents that happened to his relatives. On September 20, 2013, the representatives stated that a conciliation meeting took place on August 8, 2013, and that it appreciated the communication.

16. On November 18, 2015, the beneficiary indicated that his daughter was in a foreign country and that she and her brothers had received threats. These threats were allegedly reported to the Prosecutor's Office. He challenged the diet he was instructed to have in prison. The beneficiary stated that he lives in a cell with eight inmates, even though the cell can actually only hold four people. He added that he seldom leaves the cell.

17. On August 23, 2017, the representatives reported that there was a release order dated June 20, 2017, in favor of the beneficiary. On February 15, 2018, the beneficiary indicated that he served the time for which he was convicted. On July 4, 2018, the representatives stated that the beneficiary had already been released. On January 24, 2019, the beneficiary indicated that he does not live with his children and his wife. It was further stated that unidentified individuals were reportedly following him in a van with tinted windows, and that they were taking pictures and filming the house. On January 8, 2021, the beneficiary requested that the precautionary measures not be lifted. On May 12, 2021, he reiterated previous pleadings regarding the challenges against the beneficiary's conviction and threats he had received (without detailing time, manner, or place). On November 16, 2021, the beneficiary indicated that he has been responding to the communications and reported that he has contacted a legal team.

IV. ANALYSIS OF THE REQUIREMENTS OF URGENCY, SERIOUSNESS, AND IRREPARABLE HARM

18. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with the human rights obligations set forth in the Charter of the Organization of American States, and in the case of the Member States that have not yet ratified the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Commission's Rules of Procedure. In accordance with this Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid irreparable harm to persons.

19. The Inter-American Commission and the Inter-American Court of Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding their protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are under consideration by the IACHR. In the process of reaching a decision, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

- a) "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American system;
- b) "urgent situation" refers to risk of 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.

20. With respect to the foregoing, Article 25(7) of the Commission's Rules of Procedure establish that "decisions granting, extending, modifying, or lifting precautionary measures shall be adopted through reasoned resolutions." Article 25(9) sets forth that "the Commission shall evaluate periodically, at its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force." In this regard, the Commission should assess if the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider whether new situations have subsequently arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

21. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.⁵ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁶ The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, in addition to the lack of imminent risk, may lead to the lifting of international protection measures.⁷

22. In this matter, the Commission recalls that the precautionary measures were granted in favor of Carlos Mario Gómez Gómez in Colombia. At the time the IACHR decided to grant precautionary measures in 2007, Mr. Gómez was deprived of his liberty, and, among other circumstances, he allegedly suffered an attack with firearms within the prison where he was being held. Following the grant of the precautionary measures, the Commission notes that the State has adopted a series of measures to implement them, which it values positively under the terms of Article 25 of the Rules of Procedure. In this regard, the following actions are worthy of mention:

- (i) Follow-up and inter-institutional meetings to monitor the implementation of these precautionary measures, at least, during the period that the beneficiary was deprived of his liberty;
- (ii) Assignment of a human rights consul to the beneficiary to monitor his situation;
- (iii) Health care from various specialties, as well as delivering the corresponding prescribed medications according to medical assessments;
- (iv) Follow-up to the beneficiary's concerns regarding his meals. Particularly by responding to their requests to be allowed to cook his own food, as well as the safety of delivering an adequate diet;
- (v) The beneficiary's transfer to a prison, different from the one where the acts of aggression took place in 2007;
- (vi) Risk assessments of inmates and measures to monitor their safety inside the prison;
- (vii) Disciplinary investigation to determine how the firearm used in the attack on the beneficiary was brought into the prison; and
- (viii) Criminal investigation for the crime of attempted homicide against the beneficiary, which determined the criminal liabilities of the responsible individual.

23. The Commission understands that the representatives have long called into question how the State has implemented these precautionary measures. However, the Commission notes that the questions raised by the representatives have been presented in general terms and lack details that disprove the existence of the actions implemented by the State. The representatives have not provided information

⁵ I/A Court H.R., Provisional Measures regarding Mexico, Order of February 7, 2017, paras. 16 and 17. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

⁶ Ibid.

⁷ Ibid.

that could adequately report that the beneficiary continues to be in “imminent” risk under the terms of Article 25. They even indicated that, while the beneficiary was deprived of his liberty, he no longer received specific threats against him and that this fear was based on his “perception.” Similarly, the Commission understands that given that the beneficiary has been at liberty since 2018, he has not been in the custody of the State since then.

24. In this regard, the Commission notes that the State has requested that the precautionary measures be lifted since 2018, and has reiterated its request various occasions between that year and 2021. Under the terms of Article 25(9), the request to have the measures lifted was transferred to the representatives who presented their response. In analyzing the representatives’ response, the Commission notes that it was not provided any specific facts against the beneficiary that would make it possible to identify a serious and urgent situation. Nor did the representatives specify whether its alleged new situation was brought to the attention of the State at a national level, also reporting on the response from the State. The Commission understands that the representatives’ response was presented in general terms and lacked the chronological detail required by Article 25 of the Rules of Procedure, which would make it possible to identify an “imminent” situation when analyzing the requirement of urgency. The Commission also considers that the factual circumstances that led to the granting of the precautionary measures have changed significantly since the beneficiary was released. In any case, the IACHR has not been informed of specific events since 2018, the date on which he was released. Therefore, the IACHR has not been informed of specific events in the last four years.

25. The Commission recalls that when a State requests that a precautionary measure be lifted, it must present sufficient evidence and arguments to support its request.⁸ In the same manner, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons to do so.⁹ In this matter, the Commission has not been informed of the elements which would enable it to continue to maintain the effectiveness of the requirements presented in Article 25 of the Rules of Procedure.

26. Based on the analysis carried out and in view of the State’s repeated request to lift the measures, the Commission understands that the factual circumstances that motivated the granting of these precautionary measures have changed significantly. In this sense, the Commission considers that, according to the information available, at present, the situation does not meet the requirements of Article 25 of the Rules of Procedure. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures,¹⁰ the Commission deems it appropriate to lift these measures.

27. Lastly, the Commission emphasizes that regardless of the lifting of these measures, in accordance with Article 1(1) of the American Convention, it is the obligation of the State of Colombia to respect and guarantee the rights recognized therein, including the life and personal integrity of Carlos Mario Gómez Gómez.

V. DECISION

28. The Commission decides to lift the precautionary measures granted in favor of Carlos Mario Gómez Gómez, in Colombia.

⁸ Ibid.

⁹ Ibid.

¹⁰ I/A Court H.R., Matter of Adrián Meléndez Quijano et al. Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and Matter of Galdámez Álvarez et al. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24

29. The Commission recalls that the lifting of these measures does not prevent the representatives from filing a new request for precautionary measures should they consider that there is a situation that meets the requirements established in Article 25 of the Rules of Procedure.

30. The Commission instructs its Executive Secretariat to notify this resolution to the State of Colombia and the representatives.

31. Approved on March 14, 2022, by Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Esmeralda Arosemena de Troitiño; and Joel Hernández García, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary