

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 54/2020**

Precautionary Measures No. 698-20

Juan José Gámez Maza regarding the Bolivarian Republic of Venezuela

September 2, 2020

Original: Spanish

I. INTRODUCTION

1. On July 23, 2020, the Inter-American Commission on Human Rights ("the Inter-American Commission," "the Commission," or "the IACHR") received a request for precautionary measures submitted by Génesis María Dávila Vázquez, Simón Enrique Gómez Guaimara, and Yeimber Machado, of the organization "Defiende Venezuela"; and Ana Leonor Acosta Mérida and Alonso Enrique Medina Roa, of the organization "Pro Derechos: Coalición por los Derechos Humanos y la Democracia" ("the applicants"), urging the Commission to request the Bolivarian Republic of Venezuela ("the State" or "Venezuela") to protect the rights of Juan José Gámez Maza ("the proposed beneficiary"), who was allegedly deprived of his liberty in December 2019 by State agents without any official information as to his whereabouts or location to date.

2. The IACHR requested information on July 31, 2020, pursuant to Article 25.5 of its Rules of Procedure.

3. Upon analyzing the submissions of fact and law provided by the applicants, the Commission considers, from the applicable *prima facie* standard, that Mr. Juan José Gámez Maza is in a situation of seriousness and urgency, since his rights to life and personal integrity face a risk of irreparable harm. Therefore, the Bolivarian Republic of Venezuela is requested to: a) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Juan José Gámez Maza, in particular, to inform whether the beneficiary is in the custody of the State and the circumstances in which he is being held, or of the measures aimed at determining his whereabouts or fate; and b) to implement the actions tending to investigate the facts that prompted the granting of this precautionary measure so as to prevent them from reoccurring.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information provided by the applicants

4. The proposed beneficiary is identified as an economist. He was allegedly arrested by the General Directorate of Military Counterintelligence (DGCIM) on December 24, 2019, in the city of Santa Helena de Uairen, State of Bolivar, allegedly because of the events that occurred in that entity on December 22, 2019. These events are known as "Operation Aurora" and refer to the military uprising against the government of Nicolas Maduro. To date, the proposed beneficiary has not been brought before a court, has not communicated with his family, and has had no contact with his lawyers, and his whereabouts are not officially known.

5. At the time, through social networks, the relatives had learned that, since December 24, 2019, the proposed beneficiary had been detained under the orders of the DGCIM in the town of

Guasipati, Municipality of Roscio, Bolivar State, and would be brought before the Military Control Court. In view of these reports, the relatives were allegedly transferred to Guasipati, Santa Elena de Uairen and Puerto Ordaz, without having any reliable information on the whereabouts of the proposed beneficiary. On various occasions, they were reportedly brought before the Bolivar military court, where they were able to talk to both the military judge and the public defender of military prisoners, but they did not know whether the proposed beneficiary was in detention and that no person with that identification had been brought before the court. Other persons detained as a result of the so-called "Aurora Operation" had been presented to the courts.

6. On 30 December 2019, the couple of the proposed beneficiary allegedly requested the Office of the Public Prosecutor to order the DGCIM to inform them of the circumstances of the detention, to place them under the order of a civil judge, and to order their release while being held incommunicado for more than 130 hours by their families and lawyers. A similar request was reportedly made to the Office of the Ombudsman on the same day. Subsequently, the Office of the Human Rights Ombudsman reported that the proposed beneficiary had been transferred to the headquarters of the DGCIM in the city of Caracas, located in Boleíta, Sucre Municipality. On January 2, 2020, the family arrived at the headquarters of the DGCIM in Boleíta, where they were given implausible information about the detention of their family member, and admitted that he was there for investigations and that he had not been "deprived of liberty", but that they were not allowed to see him or have any communication with him.

7. On 9 January 2020, in view of the news that those arrested for "Operation Aurora" in Bolívar would be transferred to the courts with jurisdiction over terrorism, the family approached to find out whether the proposed beneficiary would be brought before those courts, since he was again not on the list of persons transferred. The following day, the prosecutor appointed by the National Constituent Assembly held a press conference on the case, at which he presented the list of persons detained. The proposed beneficiary was not mentioned.

8. Given the lack of information, the applicants indicated that there was concern about their state of health. According to unofficial information, the proposed beneficiary was allegedly subjected to torture, with reports that he was in a hospital in Ciudad Bolívar, Bolivar State, and that he had to be transported in a wheelchair after being beaten by the DGCIM. Regarding his health, the applicants indicated that he would suffer from high blood pressure, colon problems, was operated on for his gallbladder and has serious eye problems as a result of very advanced myopia.

2. Response from the State

9. On July 31st, 2020, the Commission requested information from the State.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABLE HARM

10. The precautionary measures mechanism is part of the Commission's functions of overseeing compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States. These general oversight functions are set forth in Article 18 (b) of the Statute of the IACHR and the precautionary measures mechanism is enshrined in Article 25 of the Commission's Rules of Procedure. In compliance with that Article, the IACHR grants

precautionary measures in serious and urgent situations, where such measures are necessary to prevent an irreparable harm.

11. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "I/A Court H.R.") have established repeatedly that precautionary and provisional measures have a dual nature, one being precautionary and the other being protective. As regards the 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 being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the request under consideration in the Inter-American System is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. Regarding the process of decision making and, 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 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. In analyzing these requirements, the Commission recalls that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists¹. The Commission further recalls that, by its very mandate, it is not called upon to make determinations through the present mechanism on the criminal liability of individuals, nor to determine whether violations of due process have taken place, since such determinations would require an analysis of the merits of a petition or case. The analysis herein is based exclusively on the requirements of Article 25 of the Rules of Procedure.

13. Furthermore, the IACHR notes that the Inter-American Convention on Forced Disappearance of Persons² establishes that "forced disappearance is considered to be the deprivation of liberty of one or more persons, in whatever form, committed by agents of the State or by persons or groups of persons acting with authorization, the support or acquiescence of the State, followed by a lack of information or a refusal to acknowledge the deprivation of liberty or to

¹ See in this regard, I/A Court H.R. Matter Inhabitants of the Miskitu Indigenous People Communities of the North Caribbean Coast Region regarding Nicaragua. Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23rd, 2018, considerandum 13; I/A Court H.R., Matter of Children and Adolescents Deprived of Liberty in the "Complexo do Tatuapé" of the Fundação CASA. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4th, 2006. Considerandum 23. Available at http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf.

² The State of Venezuela has been a party to it since its ratification on January 19, 1992.

provide information on the person's whereabouts, thereby preventing the exercise of the relevant legal remedies and procedural guarantees". In this regard, the Commission deems it relevant to recall that, pursuant to article 1(a) of the aforementioned Inter-American instrument, the States parties are obliged not to practice, permit, or tolerate the forced disappearance of persons and, in turn, articles XIII and XIV establish the procedure for petitions and communications alleging the forced disappearance of persons subject, inter alia, to the mechanism for precautionary measures, as well as the power to request information urgently from the States.

14. In accordance with the aforementioned inter-American conventions, the Commission reiterates, as part of its powers over the States, those set forth in Article 18 (b) of its Statute, which consist of "formulating recommendations to the governments of the States for the adoption of progressive measures in favor of human rights, within the framework of their legislation, constitutional precepts, and international commitments, and also appropriate provisions to promote respect for those rights. In this way, the mechanism of precautionary measures has been progressively developed to become a protection mechanism of the inter-American system, in compliance with its treaty and statutory obligations and emanating from the referred function of the IACHR to ensure compliance with the international commitments assumed by the States Parties.

15. When analysing the requirement of seriousness, the Commission notes that the allegations put forward indicate that the proposed beneficiary was arrested on December 24, 2019 by the DGCIM in the State of Bolivar, in the framework of the so-called "Operación Autora". Following his arrest, the Commission notes that he was in the custody of the State, which therefore had to assume a special position as guarantor from that moment on, since the prison authorities exercise strong control or command over the persons in their custody.³ However, the Commission notes that, despite various actions taken by relatives to contact the proposed beneficiary, no official information has been received about where he is currently being held or his detention conditions, and contradictory information has even been received from judicial and other competent authorities. Although it has been reported that the proposed beneficiary was arrested in the framework of the so-called "Operation Aurora", the proposed beneficiary reportedly was not on the public list of January 2020, through which the names of the persons who were arrested in the aforementioned Operation were reported, and the competent Courts did not provide information on his whereabouts after his arrest either. On the other hand, the Ombudsman's Office allegedly indicated in January 2020 that the proposed beneficiary had been transferred to the headquarters of the DGCIM in Boleíta, Caracas. Upon arrival at the DGCIM headquarters, the relatives were informed that the beneficiary was there for investigations, but that he was not being deprived of his liberty. In any case, the applicants reported that they have not been able to confirm to date where he is being held or to communicate with the proposed beneficiary since December 2019, so the allegations of possible torture and attacks on the proposed beneficiary are particularly serious, according to unofficial information, and the lack of information on the proposed beneficiary's health.

16. In addition to the above, the Commission notes that relatives of the proposed beneficiary have petitioned the Office of the Prosecutor to learn of the whereabouts and legal status of the proposed beneficiary since December 2019, without receiving information on the actions taken in

³ Corte IDH. *Caso Mendoza y otros Vs. Argentina*. Excepciones Preliminares, Fondo y Reparaciones. Sentencia de 14 de mayo de 2013. Serie C No. 260, párr. 188. Asimismo, véase: CIDH, Informe sobre los derechos humanos de las personas privadas de libertad en las Américas, 31 de diciembre 2011, párr. 49.

that regard. Nor have any investigations been initiated in view of the lack of information and disclosure by the State authorities regarding the fate or whereabouts of the proposed beneficiary. In this scenario, after having requested information from the State, the Commission has not obtained information to determine whether the authorities are implementing actions to protect the rights of the proposed beneficiary and, therefore, to assess whether the alleged risk was rendered moot. This is particularly relevant in view of the fact that, according to the allegations, the proposed beneficiary was deprived of his liberty by State agents, and there were also allegations of a refusal to officially disclose his whereabouts. In view of this, the Commission notes that the alleged refusal to provide official information on the situation of the proposed beneficiary prolongs his state of defenselessness and creates uncertainty as to his life and the conditions in which he is at present.

17. In view of the latter, from the *prima facie* standard, the Commission concludes that the situation of serious risk to the rights to life and personal integrity of Mr. Juan José Gámez Maza has been sufficiently proven, insofar as his whereabouts, fate or current conditions are unknown.

18. As regards the requirement of urgency, the Commission considers that it has been met, insofar as the passage of time is likely to continue to have a greater impact on his rights to life and personal integrity, particularly considering that the family members have had no certainty about the beneficiary's whereabouts or fate for almost nine months. The Commission furthermore has no information on measures implemented to ascertain his whereabouts or to report on his current situation.

19. As it pertains to the requirement of irreparable harm, the Commission finds that it is met since the possible impact on the rights to life and personal integrity constitute the maximum situation of irreparable harm.

IV. BENEFICIARY

20. The Commission declares that the beneficiary of this precautionary measure is Mr. Juan José Gámez Maza, duly identified in the corresponding procedure.

V. DECISION

21. The Inter-American Commission on Human Rights considers that the present matter complies *prima facie* with the requirements of seriousness, urgency and risk of irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, it requests that the Bolivarian Republic of Venezuela:

- a) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Juan José Gámez Maza, in particular, to inform whether the beneficiary is in the custody of the State and the circumstances in which he is being held, or of the measures aimed at determining his whereabouts or fate; and
- b) to implement the actions tending to investigate the facts that prompted the granting of this precautionary measure so as to prevent them from reoccurring.

22. The Commission requests that the Bolivarian Republic of Venezuela report, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and update this information periodically.

23. The Commission emphasizes that, in accordance with Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected in the applicable human rights instruments.

24. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the State of Venezuela and to the representatives.

25. Approved on September 2, 2020 by: Joel Hernández García, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda Arosemena de Troitiño, and Edgar Stuardo Ralón Orellana, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary