

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 7/2014**

PRECAUTIONARY MEASURE No. 110-14¹

Matter of Ramiro Hernández Llanas regarding the United States of America
March 31, 2014

I. INTRODUCTION

1. On March 19, 2014 the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a request for precautionary measures presented by Sheri L. Johnson and Naomi E. Terr, in favor of Ramiro Hernández Llanas (hereinafter "the proposed beneficiary"), a Mexican national, sentenced to the death penalty and scheduled to be executed on April 9, 2014 in the state of Texas in the United States. The application was submitted in the context of individual petition P-455-14, which alleges violations of Articles I (right to life), XVIII (right to a fair trial), and XXVI (right to due process) of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration" or "the Declaration"). The applicants ask the Commission to require the United States of America (hereinafter "the State," "United States" or "U.S.") to stay the execution to ensure that the Commission has an opportunity to rule on the merits of the petition and to avoid irreparable harm to the proposed beneficiary.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that if Ramiro Hernández Llanas 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 Mr. Ramiro Hernández 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, the proposed beneficiary is Ramiro Hernández Llanas, who is reportedly a Mexican national, convicted of murder, and who is on death row in the state of Texas. The proposed beneficiary has exhausted all available avenues of appeal, and is scheduled for execution by lethal injection on April 9, 2014. Allegedly, "central to his case are a number of fundamental human rights issues that the domestic courts have failed to resolve or remedy, including his well documented mental disabilities and the abject failure of his appointed trial attorneys to provide adequate representation." Moreover, the applicants allege that, "the state of Texas now intends to execute Mr. Hernández using an untried, untested and unverified combination of lethal chemicals that may well result in excruciating pain and a lingering death."

4. Applicants further report that on October 15, 1997, law enforcement authorities in the state of Texas arrested Ramiro Hernández Llanas, aged 28, on suspicion of murder. The applicants allege that "the police maintained that Mr. Hernández had committed the murder of a local rancher who had hired him to do simple care taking jobs." On February 7, 2000, Mr.

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

Hernández's trial commenced and on February 8, 2000, the jury convicted him of murder. On February 10, 2000, the jury sentenced Mr. Hernández to death, and on the basis of the trial record, on December 18, 2002 the Texas Court of Criminal Appeals upheld the conviction and sentence. Additionally, the applicants informed that they had appealed to the U.S. Fifth Circuit Court of Appeals, which had denied his petition for a writ of habeas corpus on September 25, 2013, and that the 216th Judicial District Court of Kerr County, Texas had issued an order setting his execution date on December 23, 2013. In addition, the applicants informed that on December 20, 2013 he had "filed a petition for a writ of certiorari with the United States Supreme Court challenging the denial of his intellectual disability and ineffective assistance of counsel claims," which is still pending.

5. Applicants allege that Mr. Hernández is "an intellectually disabled individual." In this matter, applicants have indicated that "the psychologists who have evaluated Mr. Hernández have assessed him as being intellectually disabled under the prevailing clinical definition of intellectual disability, and found no reason to believe Mr. Hernández was malingering during the testing." Furthermore, applicants allege that "the only expert who testified that Mr. Hernández does not have intellectual disability was Dr. Richard E. Coons, a psychiatrist who: 1) had never administered or even scored an IQ test; 2) had never spoken to Mr. Hernández or interviewed any person who had observed his functioning; 3) could not read the protocols from the IQ tests because he could not read or understand Spanish; and 4) could not even recall the clinical definition of intellectual disability when testifying."

6. Additionally, applicants allege that Mr. Hernández' death sentence and imminent execution violate the American Declaration for three reasons: a) "the attorneys appointed by the State to represent Mr. Hernández were inexcusably negligent in failing to conduct an adequate investigation and to present mitigating evidence on his behalf, giving rise to violations of Articles XVIII and XXVI of the American Declaration;" b) "Mr. Hernández subsequently raised a persuasive claim that he has intellectual disability (formerly referred to as mental retardation), but was deprived of a fair, unbiased and scientifically valid review of his claim by the domestic courts. The review of his mental disability claim was fatally tainted by the State's reliance on an 'expert' who applied impermissible cultural stereotyping and medically invalid criteria to conclude that, despite powerful evidence to the contrary, Mr. Hernández does not have intellectual disability and is thus not exempt from execution. As a person with a well-established intellectual disability who has not received a fair and sufficient evaluation of his claim, the execution of Mr. Hernández would constitute arbitrary deprivation of life, a denial of the right to a fair appeal, and cruel, infamous and unusual punishment in violation of Articles I, XVIII and XXVI of the American Declaration;" and c) "Mr. Hernández faces execution by lethal injection at a time when that mode of execution as currently practiced in Texas creates an unacceptable risk of causing excruciating pain and suffering, in violation of Article XXVI of the American Declaration."

7. The request for precautionary measures filed in favor of the proposed beneficiary is connected to the petition (P-455-14), in which applicants contend that the United States has violated the rights enshrined in Articles I (right to life), XVIII (right to a fair trial), and XXVI (right to due process) of the American Declaration.

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

8. 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, 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.

9. The Inter-American Commission and Court have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective.² Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights.³ Regarding the precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR.⁴ 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.

10. 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 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 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.

11. The present request for precautionary measures seeks to protect the right to life of Ramiro Hernández Llanas, who in 2000 was sentenced to death in the state of Texas, United States, and could be executed on April 9, 2014. The request for precautionary measures is related to the individual petition P-455-14, in which applicants allege violations of Articles I (right to life), XVIII (right to a fair trial) and XXVI (right to due process) of the American Declaration. Applicants assert that during the criminal proceedings there were a "number of fundamental human rights issues that the domestic courts have failed to resolve or remedy, including his well documented

² 2011 IACHR Annual Report, Chapter 3, petitions and cases before the IACHR, Parr. 11. <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp> ; Inter-American Court, Order of the Inter-American Court of October 25, 2012; Request of Provisional Measures regarding the Republic of Peru, Case of Cruz Florez, considering 5.

³ 2011 IACHR Annual Report, Chapter 3, petitions and cases before the IACHR, Parr. 11. <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>

⁴ 2011 IACHR Annual Report, Chapter 3, petitions and cases before the IACHR, Parr. 12. <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>

mental disabilities and the abject failure of his appointed trial attorneys to provide adequate representation.”

12. In the present situation, the requirement of gravity is met, in its precautionary and protective aspects; the rights involved include primarily the right to life under Article I of the American Declaration in relation to the risk resulting from the possible application of the death penalty in the state of Texas, U.S. In this regard, it has been alleged that the criminal proceedings against the proposed beneficiary did not observe the rights protected under the international law of human rights, particularly the rights to life, fair trial, and due process under Articles I, XVIII and XXVI of the American Declaration as well as the risk of obstructing the right to file petitions contained in Article 30.3 of the Rules of Procedure.

13. Regarding the requirement of urgency, the Commission notes that Mr. Ramiro Hernández Llanas could be executed on April 9, 2014, so that the loss of life of the proposed beneficiary could materialize in about 14 days. Accordingly, the Commission would be unable to complete an assessment of the allegations of violations of the American Declaration submitted in his petition prior to that date. 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.

14. 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 Ramiro Hernández Llanas is executed before the Commission has an opportunity to fully examine this matter, any eventual decision would be rendered moot in respect of the efficacy of potential remedies, resulting in irreparable harm.

15. Under Article 25.5 of the Rules of Procedure, the Commission generally requests information from the State 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.⁵

IV. DECISION

16. 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,⁶ and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of the Rights and Duties of Man; the Commission considers that this matter meets *prima facie* the requirements of gravity, urgency and irreparability set forth in Article 25 of its Rules of Procedure. Consequently, the Commission hereby requests that the United States take the measures necessary to preserve the life and physical integrity of Mr. Ramiro Hernández until the IACHR has pronounced on his petition so as not to render ineffective the processing of his case before the inter-American system.

⁵ IACHR, Rules of Procedures, Article 25.5, <http://www.oas.org/en/iachr/mandate/Basics/ruleslachr.asp>

⁶ Charter of the Organization of American States, Article 106, http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm

17. 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 to update such information regularly.

18. 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.

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

20. Approved on the 31ST day of March, 2014 by: Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; Commissioners Rosa Maria Ortiz, and Paulo Vannuchi.

A handwritten signature in black ink, appearing to read 'E. Abi-Mershed', with a long horizontal flourish extending to the right.

Elizabeth Abi-Mershed
Assistant Executive Secretary