
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 19/2021**

Precautionary Measure No. 75-19
Jose David Ellner Romero regarding Honduras
March 02, 2021
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights has decided to lift the precautionary measures at hand as a result of the beneficiary's death in July 2020. Insofar as it does not rest with the Commission to pronounce upon the international liability of the State in this proceeding, the Commission reminds that it will have the opportunity to analyze the pertinent allegations within the scope of petition 696-19 related to the matter at hand.

II. BACKGROUND INFORMATION

2. On March 21, 2019, the IACHR decided to grant precautionary measures to José David Ellner Romero, in Honduras. The request for precautionary measures alleged that José David Ellner Romero was sentenced to ten years of imprisonment by final judgment, due to the commission of several crimes of “defamation related to libel charges” to the detriment of a public figure. Moreover, the request is related to petition P-696-19, whereby purported violations of human rights enshrined in Articles 8, 24 and 25 of the American Convention on Human Rights were alleged in relation to the reportedly undue use of criminal law to, according to the request, “censure complaints against corruption and impunity in the country,” among other matters.

3. Upon reviewing the allegations of fact and law made by parties, the Commission considered that a serious and urgent situation with risk of irreparable harm was *prima facie* established. Therefore, in accordance with Article 25 of the Rules of Procedure, the Commission requested Honduras to suspend the execution of the conviction issued on March 15, 2016 by the Tegucigalpa Sentencing Court, until the IACHR has an opportunity to reach its decision upon petition P-696-19.¹

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 through the request for information from the parties. Moreover, the IACHR held a working meeting on May 7, 2019, in its 172nd period of sessions.

5. The State informed that, according to the resolution issued by the Sentence Enforcement Court (*Juzgado de Ejecución*) of the Judicial Section of Tegucigalpa on March 27, 2019, the recommendation issued by the IACHR requesting to suspend the enforcement of the conviction issued on March 15, 2016 by the Tegucigalpa Sentencing Court (*Tribunal de Sentencia*) was dismissed. The sentence enforcement judge considered that the Commission did not have jurisdiction strictly speaking, and that as a result, it would not be able to issue orders as the I/A Court H.R. does, but rather to provide reports, conclusions, and advise bearing a “notorious moral, legal and political value.” Furthermore, it is indicated that in order to preserve

¹ IACHR, Resolution 15/19, PM 75/19 – José David Ellner Romero, Honduras, March 21, 2019. Available at <http://www.oas.org/es/cidh/decisiones/pdf/2019/15-19MC75-19-HO.pdf>

his life and physical integrity, the proposed beneficiary is deprived of liberty with all the security measures in the penitentiary. With regard to the alleged violations of the right to freedom of expression, the State considers that, within the framework of the I/A Court H.R. case law, the constitutional and legal framework, such right has not been violated, and that the imposed punishment lies within the scope of the conventional standards of legality, legitimacy, sufficiency, necessity and proportionality.

6. In particular, the State informed about a meeting held on March 29, 2019 with the members of the Protection Mechanism Technical Committee, for the purposes of analysing the scope of the IACHR resolution. In such meeting, it was agreed: i) to establish communication with the beneficiary and his relatives, for the purposes of giving consent to agree on sufficiently protective measures; ii) to establish formal communication with the National Penitentiary Institute (INP by its acronym in Spanish), for the purposes of requesting a meeting with the petitioner; and iii) to request information from the INP about the beneficiary's current situation. Similarly, several visits to the penitentiary have been conducted, where it was confirmed that the beneficiary was in good physical condition and had drinking water and food. It is further indicated that the beneficiary requested to be transferred from the current penitentiary to one more accessible to the beneficiary's family. Furthermore, the State indicated that on May 30, 2019, the Criminal Appellate Court declared the appeal for protection of constitutional rights (*amparo*) filed by the beneficiary inadmissible, due to purported violations of due process and freedom of expression, on the grounds that the beneficiary did not file remedies or actions in the terms established.

7. On another note, the representatives manifested that the beneficiary was arrested by state authorities in compliance with an arrest warrant against him and expressed their concern that the beneficiary may have to endure torture or may lose his life, given the violent context in which the arrest took place. According to the information provided, the beneficiary was taken to the military operations center "*el Táctico*," being the first and only journalist imprisoned in such center. The beneficiary's wife travelled to the penitentiary daily to bring him food. It is considered that the State did not implement the measures at hand promptly, and thus, they request provisional measures before the I/A Court H.R. In July 2019, the representatives indicated that the beneficiary suffered harassment in the military center where he is imprisoned, and that his wife purportedly filed a complaint regarding the penitentiary authorities' intention to transfer the beneficiary to a maximum-security prison, as well as the suspension of her visit with no apparent legal cause. In this regard, they expressed their concern for the safety of the beneficiary.

8. In August 2020, the Commission learned through various media that the beneficiary had died due to health complications. Considering the foregoing, information was requested from the parties on August 4, 2020 and observations on the matter were obtained. The representatives did not send a response to the request.

9. On August 14, 2020, the State reported that the beneficiary was transferred to a hospital on July 25, 2020 due to a suspected severe acute respiratory infection (SARI) and died on July 18, 2020. According to the State, the prison conditions were optimal during the time that the beneficiary was in the penitentiary center. He was granted full enjoyment of his rights and he allegedly did not suffer any mistreatment or harassment by the personnel, as stated by the beneficiary himself. In addition, the State reported that the protocols for the preparation, prevention, and control of COVID-19 within the penitentiary center have been complied with, in accordance with the provisions of the WHO and the country's Ministry of Health.

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

10. The mechanism of precautionary measures is part of the Commission's function to monitor compliance with the human rights obligations established in the Charter of the Organization of American

States, and in the case of 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 Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

11. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that the precautionary and provisional measures have a double character, both protective and precautionary. 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 under consideration by the IACHR. 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. With respect to the foregoing, Article 25.7 of the Commission’s Rules of Procedure establishes that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25.9 establishes 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 evaluate if the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures, persist. Moreover, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

13. The Commission recalls that these precautionary measures were granted in 2019 with the aim of suspending the execution of the conviction issued on March 15, 2016 by the Tegucigalpa Sentencing Court, until the IACHR has ruled on the petition P-696-19. In this regard, the Commission takes note of the various proceedings reported by the State through its reports concerning the implementation of this precautionary measure (see *supra* paras. 4 and 5). Moreover, the representatives presented their observations and requirements (see *supra* para. 6).

14. In view of the allegations made by the State, the IACHR recalls that the precautionary measures are inserted within the duty of prevention that States have in such a way that, upon becoming aware of a situation of risk, they are obliged to adopt the measures that are reasonably necessary to protect the rights of the beneficiaries. Should it not take measures in this regard, the State would fail to comply with an international obligation and, if such risk comes to fruition, it may be held internationally liable. In this sense, it is not questionable that when the Commission, the main organ of the Organization of American States in charge of the protection and promotion of human rights in the American Continent, calls on a specific State to protect a person through a precautionary measure, the State is obliged to comply with it due to the aforementioned duty of prevention, and it may incur international liability, which could eventually be declared through an individual petition.

15. Having specified the foregoing, and inasmuch as it is not appropriate in this proceeding to either rule on the international liability of the State or to determine alleged violations of human rights, the Commission recalls that it will have the opportunity to analyze the pertinent allegations in the context of the petition related to this matter.

16. When analyzing current compliance with the procedural requirements, the Commission notes that, according to public information confirmed by the State, the beneficiary died on July 18, 2020. At the time and in light of the information available, the IACHR expressed consternation and solidarity with the family of journalist David Romero through its social media and reminded the terms of the resolution granting his precautionary measure. Due to the foregoing, the Commission remarks that the death of the beneficiary entails a material impossibility regarding the implementation of these measures.

17. Therefore, taking into account that temporality and exceptionality are characteristics of the precautionary measures,² the Commission considers that the requirements established in Article 25 of its Rules of Procedure are no longer met, given that the matter is now devoid of purpose as a result of the death of the beneficiary of these measures. Therefore, the Commission deems it appropriate to lift these precautionary measures.

V. DECISION

18. The Commission decides to lift the precautionary measures granted to Mr. José David Ellner Romero in Honduras.

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

20. Approved on March 02, 2021 by: Joel Hernandez, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay, Esmeralda Arosemena de Troitiño, Edgar Stuardo Ralón Orellana and Julissa Mantilla Falcón, members of the IACHR.

María Claudia Pulido
Acting Executive Secretary

² 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 Galdámez Álvarez *et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24