

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 21/2021**

Precautionary Measure No. 413-16

Lester Toledo and family regarding Venezuela

March 2, 2021

Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift the precautionary measures at hand in accordance with Article 25(9) of the Rules of Procedure, given that, despite the requests for information, the beneficiaries' representation has made no observations; thus, 5 years have elapsed without receiving a response or specific and up-to-date information. According to public information, Mr. Toledo is allegedly out of the country. In such circumstances, the Commission does not have sufficient elements to call for these precautionary measures to remain in force.

II. BACKGROUND INFORMATION

2. On June 4, 2016, the IACHR decided to request the adoption of precautionary measures in favor of Lester Toledo and his family, in Venezuela. The request alleged that Lester Toledo, deputy of the Zulia State Legislative Council, was purportedly being subjected to a series of threats and harassment due to his political position.

3. Upon analyzing the submissions of fact and law submitted by the parties, the Commission considered that the information provided showed *prima facie* that the beneficiaries were in a serious and urgent situation, given that their rights to life and personal integrity were at serious risk. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission requested that Venezuela: a) adopt the necessary measures to guarantee the life and personal integrity of Mr. Lester Toledo and his family; b) adopt the necessary measures to guarantee Lester Toledo's political rights, so that he can carry out his activities as a deputy of the Legislative Council of the State of Zulia and leader of the opposition without being subjected to acts of harassment, threats and acts of violence; c) consult and agree upon the measures to be adopted with the beneficiaries and their representation; and d) report on the actions taken to investigate the alleged events that led to the adoption of the precautionary measures at hand, so as to prevent them from reoccurring.¹

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

4. Upon having granted the measures, the Commission kept monitoring the matter through requests for information from the parties.

5. On September 27, 2016, the State reported that the beneficiary's wife had filed a complaint on May 17, 2016 with the Public Ministry due to alleged acts of persecution by officers of Venezuela's National Intelligence Service (SEBIN) and of the General Directorate of Military Counterintelligence (DGCIM) in the city of Maracaibo, state of Zulia. The State noted that the Prosecutor's Office was conducting proceedings to determine the responsibility of the authors and other participants in the open investigation.²

¹ IACHR, Resolution 35/16. Precautionary Measure 413-16. Matter of Lester Toledo *et al.* regarding Venezuela, June 4, 2016. Available (in Spanish) at <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC413-16-ES.pdf>

6. On May 20, 2016, the Prosecutor's Office requested protection measures in favor of the beneficiary's wife and daughter before the competent court. On that same date, the Judiciary granted the corresponding protection measures, consisting of permanent rounds by officers of the Autonomous Police Institute of Maracaibo Municipality (*Instituto Autónomo Policía del Municipio Maracaibo*) patrolling the house. On August 24, 2015, the beneficiary's wife reportedly expressed before the Zulia State Victim Care Unit (*Unidad de Atención a la Víctima del Estado Zulia*): "The events for which I requested the protection measures have ceased, therefore I request the closure of the measure." The State indicated that, despite that request, it remained "active" in the Court and the Security Agency.

7. On September 27, 2016, the IACHR requested observations from the representation. On March 5, 2019, the request for information was reiterated. The IACHR has received no response to either request since then.

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

8. 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 set forth in Article 18 of the Statute of the IACHR, and the mechanism of precautionary measures 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.

9. 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, one precautionary and the other 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 under consideration by the IACHR. Regarding the process of decision making and, in accordance with 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 impact on rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

10. In light of the above, Article 25(7) of the IACHR's Rules of Procedure sets forth that "the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions." Article 25(9) provides 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 still 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.

11. Additionally, the Commission recalls that while the assessment of procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, maintaining such measures

in force requires a more rigorous evaluation.² For this matter, the burden of proof and argument increases as time goes by and there is no imminent risk.³ The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.⁴

12. The Commission recalls that the precautionary measures at hand were granted considering that the beneficiary was acting as a deputy to the Legislative Council of the state of Zulia, having been subjected to threats, harassment, and accusations. After the measures were granted, the State reported the protection measures that had been adopted in favor of the beneficiary's wife and daughter, as well as the wife's statements. According to the State, in 2016, the wife indicated that it was no longer necessary to keep the protection measures in force since the events had "ceased."

13. Upon requesting observations from the beneficiaries' representation in 2016 and reiterating such request in 2019, the Commission has received no response in 5 years. During all that time, and despite having request it, the Commission has not received information on specific facts that would indicate that the beneficiaries are in a situation of imminent risk in accordance with Article 25 of the Rules of Procedure. In that regard, according to public information,⁵ the Commission emphasizes that the beneficiary has been outside the country since approximately 2016.

14. In light of the analysis performed, approximately 5 years having elapsed without receiving information on situations presenting a risk for the beneficiary, and given his alleged departure from the country, the Commission does not have elements sufficient to indicate that a situation placing the beneficiary at risk is still in force in accordance with Article 25 of the Rules of Procedure. Taking into account the temporary and exceptional nature of precautionary measures,⁶ the Commission considers that their lifting is appropriate.

V. DECISION

15. The Commission decides to lift the precautionary measures granted in favor of Lester Toledo and his family in Venezuela.

16. The Commission instructs the Executive Secretariat to notify this resolution to the State of Honduras and to the representation.

17. Approved on March 2, 2021 by: Joel Hernández, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarette 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. 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

³ Ibidem

⁴ Ibidem

⁵ EL MUNDO, Lester Toledo, Venezuelan opponent: "We call on Spain to exercise its leadership in the EU so that sanctions are enforced," December 12, 2017. Available at <https://www.elmundo.es/internacional/2017/12/12/5a2c0537468aeb1248b45e0.html>

⁶ 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. 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