
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 23/2021**

Precautionary Measure No. 691-20
Facundo José Astudillo Castro regarding Argentina
March 2, 2021

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decided to lift these precautionary measures as the situation and whereabouts of Facundo José Astudillo Castro have been identified. In this regard, the Commission regrets the death of young Facundo José Astudillo Castro and in view of the change of circumstances, considers that the measures have been rendered moot, given that the requirements of Article 25 of the Rules of Procedure are longer met.

II. BACKGROUND INFORMATION

2. On August 1, 2020, the IACHR granted precautionary measures to Facundo José Astudillo Castro whose whereabouts were unknown.¹ Upon identifying compliance with the requirements of Article 25 of the Rules of Procedure, the Commission requested that the State of Argentina: a) adopt the necessary measures to determine the situation and whereabouts of Facundo José Astudillo Castro, in order to protect his rights to life and personal integrity. In this regard, the State was urged to ensure effective search actions through its specialized mechanisms created for this purpose; b) consult and agree upon the measures to be adopted with the beneficiary's family and representatives; and c) implement the actions aimed at investigating the events that led to the granting of this precautionary measure, so as to prevent them from reoccurring.²

III. SUMMARY OF THE INFORMATION PROVIDED DURING THE TIME THE PRECAUTIONARY MEASURES WERE IN FORCE

3. Upon granting the precautionary measures, the Commission monitored the matter by means of requests for information from the parties. The State submitted a report on August 18, 2020. On October 13, 2020, the IACHR forwarded the information to the representatives and the parties were asked to provide details on "public information that indicate[d] that the beneficiary's situation had been determined in recent weeks." The State responded on October 27, 2020 and the representatives on November 2, 2020.

A. Information provided by the representatives

4. On August 15, 2020, a body was found in the area of the canal called "Cola de Ballena," nearby the area known as Villarino Viejo, Province of Buenos Aires. On August 21, 2020, other human remains were found. On August 25, 2020, an autopsy was performed with the participation of the Argentine Forensic Anthropology Team, the Forensic Medical Corps of the Supreme Court of Justice of the Nation and the

¹ According to the information provided by the representatives, Facundo José Astudillo Castro disappeared on April 30, 2020, when he was moving to another city and was detained by police officers for violating the lockdown imposed due to the COVID-19 pandemic. From that day, his whereabouts or location were unknown.

² IACHR, Resolution 43/2020, PM 691-20 - Facundo José Astudillo Castro regarding Argentina, August 1, 2020. Available (in Spanish) at <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf>

expert witness appointed by Facundo's family, extracting evidence to carry out the pertinent DNA matching. Subsequently, the Federal Judge in charge confirmed, based on the different anthropological, dental, radiological and genetic examinations, that all the human remains corresponded to Facundo José Astudillo Castro. On October 11, 2020, the team of forensic experts presented the conclusion of its report stating that Facundo's death was caused by mechanical asphyxia by submersion (drowning). This is translated into a violent death and it was not possible to determine scientifically and in a specific way the manner of death: suicide, homicide, or an accident. Subsequently, the Federal Court issued a statement in which the Judge assessed certain aspects of the report, in particular the reference to the beneficiary's death "without the participation of third parties," which is questioned by the representatives.

5. On the other hand, on September 13, 2020, the backpack with belongings of the beneficiary was found in the coastal area, near the place where the body was found. Its contents were subjected to expert examination. However, the beneficiary's mother reported that several documents were missing, as well as that the garments have strange "faults" that did not correspond to their pre-existing condition. Moreover, the representatives indicated that a "quantity of human bones" that did not belong to Facundo were found.

6. Regarding the investigations carried out, the Federal judge investigates a case of aggravated coercive deprivation of liberty and the challenge attempted against the intervening prosecutor was rejected. In addition, it was indicated that different entities such as the National Directorate of International Legal Affairs in Human Rights of the Ministry of Justice and Human Rights of the Nation, the General Audit of Internal Affairs of the Ministry of Security of the Province of Buenos Aires, the Undersecretariat of Criminal Investigation and Judicial Cooperation of the Ministry of Justice of the Nation, among others, have given information to the representatives regarding the actions carried out for the investigation of the facts. Nevertheless, the representatives presented questions to the investigations.³ Moreover, it was reported that, at the request of the mother of the proposed beneficiary to the Interim Attorney General, two prosecutors belonging to the Institutional Violence Attorney and the Specialized Cybercrime Unit were incorporated into the investigation. After the incorporation of these officers, actions have been taken to investigate a possible abuse of authority by police officers regarding a witness to the events denounced.

7. Lastly, the representatives stressed that several of the witnesses who have testified in the judicial investigations, as well as the mother of Facundo José Astudillo, the lawyer who represents her and friends of the beneficiary, have been subjected to intimidation, threatening calls, surveillance and harassment, some of them by Buenos Aires police officers and others by unknown persons. The representatives indicated that they requested protection measures at the domestic level for some of them, obtaining measures such as permanent custody in the residence of one of the witnesses,⁴ as well as the initiation of

³ The representatives emphasized that the suspicion of involvement of police officers of the Province of Buenos Aires -the last who saw Facundo alive in the framework of administrative control procedure- remains the only reasonable investigative hypothesis. Despite this suspicion, the Police of the Province of Buenos Aires, intervened as auxiliary to the provincial justice and only until July 8 the dismissal of the judicial investigation was ordered. The representatives alleged purported irregularities during this period. The representatives also stressed the lack of consistency in the statements of the investigated officers, as well as the discovery of an element belonging to the beneficiary within the facilities of a police station, the location of a police team in the vicinity of where the body was found, which is why an inspection of that vehicle has been carried out, and the different elements found in its interior are under analysis, one of them purportedly a mineral fragment that Facundo José Astudillo was carrying. Different expert examinations are currently being carried out, such as DNA matching tests, examinations of cell phone devices belonging to police officers, among others, pending their results. Lastly, the representatives indicated that with the participation of the Federal Justice, the following was detected: delays in the process, lack of cooperation in accessing the content of the case, inaccuracy in the proceedings, among others, which gave rise to the challenges against the Prosecutorial Agent, which were dismissed by federal justice.

⁴ According to the information available, witness Marcelo Fabián Gonzalez was subjected to harassment and threats during an interrogation in which it was suggested that if he did not say what the police officers intended, he would find himself in trouble; this allegedly caused him great fear, led him to change his residence and he currently has permanent police protection in that place.

criminal proceedings for abuse of authority, which are in progress. It was indicated that upon finding signs of the participation of members of the police in the acts of harassment and threats of various persons linked to the investigation,⁵ the representatives filed a request for habeas corpus, which was rejected, a decision that is definitive upon being confirmed by the Federal Court of Appeals. They also indicated that a judge had ordered to open a criminal case against the lawyer who brought the complaint, considering that in statements to the press he had violated the principle of secrecy of the proceedings, a decision classified by the representatives as “disproportionate,” affecting the guarantee of the exercise of the profession. Therefore, the representatives request the adoption of protection measures.

B. Information provided by the State

8. On August 17, 2020, the State sent information indicating the different investigative activities aimed at finding the whereabouts of the beneficiary.⁶ The State indicated that on August 15, 2020, a lifeless body appeared in Villarino Viejo, near the area where the beneficiary was last seen.⁷ The specialized personnel of the Argentine federal police, together with members of the Argentine Forensic Anthropology Team, removed the body and transferred it to Buenos Aires to carry out the rigorous studies aimed at its recognition and the corresponding autopsy. The forensic team was also authorized to carry out tasks to lift traces, remains and other procedures that could be of interest to the case.

9. The State emphasized that the highest authorities of Argentina spoke with absolute forcefulness about the priority of the case and, consequently, they compromised the full availability of all State resources to find the whereabouts of the beneficiary and investigate the responsibilities that may correspond for his disappearance has been made available to the family, including the Witness Protection Program of the Ministry of Justice and Human Rights of the Nation, psycho-social support of the Center for Assistance to Victims of Human Rights Violations “Dr. Fernando Ulloa” from the Secretariat of Human Rights, the Directorate of Orientation, Accompaniment and Protection of Victims of the Public Prosecutor’s Office of the Nation (DOVIC, by its Spanish acronym) and any other support that may be needed for the search and investigation. Additionally, the State reported that the challenge against the Prosecutor in charge of the investigation, by the beneficiary’s family, was rejected by the Federal Judge, considering it inadmissible.

⁵ Daiana Gonzalez was purportedly subjected to a raid at her residence by the police and the chief of police Mayor Buratovich threatened and intimidated her. On another note, lawyer Luciano Peretto was threatened by Deputy Commissioner Pablo Reguillon, and he also observed police patrols outside his residence, a situation that Cristina Castro, Facundo’s mother has also noticed. Alan Alessandro, Paulo Nataly Klein, and Javier Leonidas Espinosa, who have been threatened by the Argentine Federal Police, Francisco Cardona has been followed by unknown persons, while Daniel Eriberto Gayte, Agustina Gayte, and Vanesa Yandel Ganduglia have noted that they are followed by vehicles driven by police or unknown persons.

⁶ The State noted that on July 25 a raking was carried out in the area in which different authorities assisted by dogs participated, the naval prefecture dived under the railway bridges and a drainage channel. For their part, members of the Federal Police accompanied the tasks performed by the Prefecture with a drone from the Communications Division and thus accessed images of the swampy areas, and Air Squad personnel took aerial views of the place. In addition, officers from the Argentine Federal Police (PFA, by its Spanish acronym), the National Gendarmerie and the Airport Security Police were in charge of the raking over and under the tracks, on both sides. They also contacted persons living in the area to verify whether they saw the beneficiary. Furthermore, information was obtained on the Vehicle Automatic Location System (AVL, by its Spanish acronym), records on the police teams that had been assigned to the Teniente Origone police station, the police personnel who were providing service, the *trunking* equipment that were assigned to these personnel, their geo-positioning and the radio modulation records of April 30, the determination of the mileage and the exact location in which each of the 14 teams that had been identified circulating along the track of the National Route No. 3 on April 30 allegedly stopped their march in the time slots of interest. It was also required to provide the same location in relation to Facundo’s telephone number, AVL reports from different teams, verification with the country’s emergency services, hospitals and morgues about new records of the admission of someone whose characteristics match those of the beneficiary, as well as proceedings aimed at finding the whereabouts of a person who purportedly worked with Facundo, among others.

⁷The body was found in a water canal and was found by a person who identified himself as an *amateur* fisherman, who notified the Federal Prosecutor’s Office No. 1 of Bahía Blanca.

10. On October 27, 2020, the State sent a report indicating that on September 2, 2020 the mother of the beneficiary was notified of the conclusion of the report on the advance of expert witnesses' testimonies from the Argentine Forensic Anthropology Team and from the Forensic Medical Team. It was determined that the remains found on August 15 and 21, 2020, in the whereabouts of "Villarino Viejo," Province of Buenos Aires, belong to the beneficiary. The report mentioned concluded, based on several anthropological, dental, radiological and genetic examinations that all the human remains found belong to the beneficiary.⁸ The Judge in charge of the case has ordered that the biological samples be preserved in accordance with local regulations.

11. The forensic report noted that the advanced state of transformation of the corpse (skeletonization) limits the scientific possibilities to provide investigative elements on the mode of death, and forensic science cannot determine with scientific rigor that it is one or another mode of death: suicidal, homicidal, or accidental. Moreover, the lesionology conclusions of the report submitted by the forensic team observed that in the skeletal remains: no signs of the participation of third parties were observed, no lesions of traumatic origin with signs of vitality were determined, there was no evidence of ante-mortem traumatic lesions and/or skeletal pathologies of a congenital and/or clinical origin, disarticulations due to predators' actions, without signs of vitality, were observed, among others. The expert testimony concluded that the death of the beneficiary was caused by mechanical asphyxia due to submersion (drowning). It was reportedly a violent death as it is not a death from natural causes.

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

12. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with human rights obligations established in the Charter of the Organization of the American States and, in the case of Member States that have not yet ratified the American Convention, in 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.

13. 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, 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 being considered 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.

⁸ The report submitted by the entomologist expert concluded that the cadaverous fauna found indicates a Post-mortem Interval (PMI) of at least 40 days as of the date of the autopsy, with no determination of a maximum PMI since the fauna includes insects that reached the body in the final stages of decomposition.

14. 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 must assess whether the serious and urgent situation and the irreparable harm potentially coming to fruition, which gave rise to the adoption of precautionary measures continue to exist. Furthermore, it shall consider whether there are new situations that may comply with the requirements set forth in Article 25 of the Rules of Procedure.

15. As a preliminary matter, the Commission recalls that it is not relevant to determine, in this proceeding, violations to the rights acknowledged in the American Convention on Human Rights, as well as violations to the due process of law or personal liberty. Due to the very mandate of the Commission, it is not for it to determine either individual criminal liabilities as regards the events reported in this proceeding. The analysis performed hereinbelow by the Commission is exclusively related with the requirements of seriousness, urgency and risk of irreparable harm set forth in Article 25 of its Rules of Procedure, which can be resolved without addressing determinations on the merits relevant to a petition or case.

16. The Commission observes that these precautionary measures were granted with the aim of "adopting the measures necessary to determine Facundo José Astudillo Castro's situation and whereabouts, with the purpose of protecting his rights to life and personal integrity." In this sense, the Commission has noted several proceedings performed by the State in pursuit of the whereabouts of the beneficiary, having considered it as a "priority" case and aimed several resources for such purpose. Thus, the Commission observes that there exists no contradiction between the representatives and the State as to the fact that the human remains found on August 15 and 21, 2020 belong to the body of Facundo José Astudillo. Furthermore, the parties have agreed in filing before the Commission numerous domestic reports and decisions that allegedly evidence that situation.

17. Moreover, the Commission declares that the relatives and the representatives have participated in and accompanied the many investigative proceedings which resulted in the location and identification of the body of the beneficiary. Moreover, the authorities have, upon the family's request, arranged for the inclusion of two prosecutorial agents who continue performing different inquiries with the support of experts of different areas, with the purpose of advancing the corresponding investigations.

18. The Commission regrets the death of the young Facundo José Astudillo Castro and in view of the change of circumstances, considers that the measures have been rendered moot, given that the requirements of seriousness, urgency and need to prevent a risk of irreparable harm are no longer met. Consequently, it is appropriate to lift these precautionary measures.

19. As indicated in the matter *Santiago Maldonado regarding Argentina*,⁹ the Commission recalls that due to the very nature of the precautionary measures mechanism, it is not pertinent for the Commission to assess the events or arguments which must be analyzed when assessing a petition or case filed before it. Therefore, through the precautionary measures mechanism, the Commission shall not render a decision regarding whether the State has acted or not in compatible terms with its international obligations, both in the context of the alleged detention on April 30, 2020 and in the investigation that resulted in the lack

⁹ IACHR, Resolution 2/18, PM 546-16. Santiago Maldonado, Argentina, Lift, January 13, 2020. Available (in Spanish) at <http://www.oas.org/es/cidh/decisiones/pdf/2018/2-18MC564-17-AR-levantamiento.pdf>

of knowledge in connection with Facundo José Astudillo's whereabouts. Those aspects may only be considered by the Commission in the context of an eventual petition.

20. Notwithstanding the foregoing, the Commission considers it pertinent to remember that in line with Articles 8 and 25 of the American Convention, the State of Argentina is obligated to diligently investigate the circumstances that gave rise to the death of the beneficiary. In this sense, it is for the State to exhaustively investigate all the hypotheses that have arisen throughout the very investigation, guaranteeing his family relatives and representatives adequate participation. The Inter-American Commission urges that the State continue the investigation in order to clarify the circumstances related to the death of Facundo José Astudillo, if appropriate, with determination of the liabilities that may arise, irrespective of their nature.

21. Lastly, regarding the requests for extension filed both in favor of Mr. Facundo José Astudillo's mother, his lawyer, friends and witnesses linked to the criminal investigation carried out into the disappearance of the beneficiary, the Commission identifies that given the nature and generality of the information provided, as well as the fact of not having information regarding the explicit conformity of all of them, in line with what is set forth in Article 25.6.c,¹⁰ and since these precautionary measures have been rendered moot, at this time there is no elements that fulfill the procedural requirements in their favor and to be able to assess an extension of precautionary measures. Notwithstanding, as the Commission has previously indicated, if such persons or their representatives consider that the situation of risk subsists or meets the procedural requirements, they may present the information in a detailed and updated manner regarding each person so that the Commission analyze their current situation pursuant to Article 25 of the Rules of Procedure. In the event that a new request for precautionary measures is filed, the Commission will register it and carry out the corresponding procedure.

IV. DECISION

22. The Commission considers that the precautionary measures granted in favor of Facundo José Astudillo Castro are now devoid of purpose. Therefore, the Commission decides to lift the precautionary measures ordered.

23. The Commission hereby instructs its Executive Secretariat to notify this resolution to the State of Argentina and the representatives.

24. Approved on March 2, 2021 by: Joel Hernández, 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

¹⁰ "In considering the request, the Commission will take into account its context and the following elements: (a, b) c. the express agreement of the potential beneficiaries, when the request is filed by a third party, except in situations in which the absence of consent is justified."