
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 63/2021**

Precautionary Measure No. 885-17
Luz Angela Niño Chacón regarding Colombia
August 19, 2021
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Luz Angela Niño Chacón. At the time of reaching this decision, the Commission observes that the beneficiary's representation has not provided information since the measures were granted in 2018, and the State has repeatedly requested the lifting of this matter. The Commission assessed the actions taken by the State to implement these measures with a view to providing Ms. Niño with due medical care.

II. BACKGROUND INFORMATION

2. On February 2, 2018, through Resolution 5/2018, the Commission requested the adoption of precautionary measures for Luz Angela Niño Chacón (the beneficiary), in Colombia. According to the request, the beneficiary has metastatic cancer of the face and skin. It was indicated that, despite having court decisions in her favor, she is not receiving adequate medical treatment and her health status is critical.

3. Upon analyzing the submissions of fact and law offered by the parties, in light of the specific context in which they allegedly took place, the Commission considered that the beneficiary was *prima facie* in a serious and urgent situation, given that her rights to life and personal integrity were at risk. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission requested that the State of Colombia: a) adopt the necessary measures to preserve the life, personal integrity, and health of Ms. Luz Angela Niño Chacón, in particular, by providing adequate medical care, according to her diseases, and in compliance with the applicable international standards; b) consult and agree upon the measures to be adopted with the beneficiary and her representatives; and c) report on the actions taken to investigate the alleged events that led to the adoption of the resolution, so as to prevent them from reoccurring.¹

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

4. During the time the precautionary measures were in force, the Commission has followed up the situation that is the subject matter of these precautionary measures by means of requesting information from the parties. On February 20, 2018, the State requested a timeline extension, which was granted on March 28, 2018. The State responded on April 3, 2018. This information was forwarded to the representation on April 9, 2018. On May 25, 2018, the State again provided information. The State's response was forwarded to the representation on April 30, 2019. On September 18, 2019, the State sent another report, which was forwarded to the representation on March 3, 2020. On September 11, 2020,

¹ IACHR, Luz Angela Niño Chacón regarding Colombia (PM-885-17), Resolution 5/2018 of February 2, 2018, available [in Spanish] at <http://www.oas.org/es/cidh/decisiones/pdf/2018/5-18mc885-17-co.pdf>

the State requested the lifting of the matter. On December 3, 2020, the State reiterated its request. On January 11, 2021, the IACHR requested the representation's observations. The State reiterated its request to lift the measures on March 3, 2021; April 28, 2021; and June 17, 2021.

A. Information provided by the State

5. On April 3, 2018, the State reported that on December 18, 2017, the Medical Board of oncology specialists in head and neck surgery ("the Medical Board") concluded that there is no intervention that could be offered to the beneficiary from the surgical point of view. It was then considered to refer the beneficiary to be treated by clinical oncology and radiotherapy. Similarly, analgesics and assessment by pain management clinic were ordered. On December 21, 2017, the beneficiary was assessed by an oncologist from the National Cancer Institute ("INC"), who ordered high-risk polychemotherapy in a first cycle of treatment, and several laboratory tests before initiating cancer treatment.

6. On January 5, 2018, the beneficiary attended an appointment at the INC to discuss the possibility of performing chemotherapy and radiotherapy at the same time. The specialist brought the case to the Medical Board for Special Cases in view that she had an unusual comorbidity. On January 10, 2018, the beneficiary visited a dermatologist oncologist at the INC, who told her that there are no contraindications to performing chemotherapy and radiotherapy at the same time. On January 18, 2018, a simulation CT scan (computed tomography scan) was performed at the INC. Chemotherapy sessions purportedly started at the INC on January 24, 2018. The first cycle of chemotherapy was reportedly practiced on dates: February 5, February 26, and March 20, 2018. Additionally, 30 radiotherapy sessions were reportedly scheduled, which began on February 5, 2018, and were to be practiced every day from Monday to Friday until the 30 sessions were completed, that is, on March 16, 2018.

7. In the same report, the State indicated that the beneficiary is enrolled in the compulsory health insurance system in Colombia as a beneficiary of her couple, Mr. Nomael Rodríguez, enrolled in the contributory regime in the EPS Medimas. The EPS allegedly determined the following service network: first-level care at the IPS El Rosal located in the user's municipality of residence, and, as from December 2017, access to highly complex services, such as oncology, at the INC. The INC is a public, specialized national hospital attached to the Ministry of Health, which acts as an advisory entity to the State of Colombia in matters of cancer control and management in the country. Additionally, since November 2017, EPS Medimas has assigned a hospital manager to permanently monitor and trace the care provided to the beneficiary.

8. The State indicated that following the claim concerning the violation of the beneficiary's right to health, the beneficiary underwent clinical assessment from April 2016 until the second week of February 2018, which concluded that each time she has requested health services, the health system has guaranteed care. It was emphasized that she received care every month in 2017, and the longest time elapsed from one care to another has been from October 11 to November 22. Regarding the judicial action filed by the beneficiary –provisional measure from the Cundinamarca Court dated September 26, 2017–, on that date, the necessary assessments to identify the ideal treatment for the patient were underway, and only on October 11, 2017, the surgery order with the opinion of the various specialists was issued. It was further stated that the National Superintendence of Health was carrying out inspection and surveillance actions, analyzing the EPS conduct to determine the admissibility of an administrative investigation into the 40-day interruption of care for the beneficiary and the discontinuity in her treatment.

9. The State reported that the first Follow-up and Agreement Meeting was held on February 23, 2018, to follow up on the implementation of the precautionary measures. The beneficiary explained the reasons that motivated her request for precautionary measures and expressed concern about her nutritional situation, her current diagnosis, and the possibility of operating on the tumor. She also mentioned that she had financial difficulties. At the said meeting, the following commitments were adopted: 1) call a meeting with the beneficiary so that EPS representatives can resolve her doubts regarding her treatment; 2) arrange a nutrition consultation in the Cancer Institute, and if not possible, find an alternative specialist; 3) request an appointment with the Head and Neck Surgery specialist to assess the beneficiary's current condition; 4) activate social response. It was stressed that on March 12, 2018, in compliance with commitments acquired, an informative meeting was held at the National Cancer Institute, which aimed to resolve doubts about the beneficiary's treatment from a medical point of view.

10. On May 25, 2018, it was reported that the beneficiary was no longer hospitalized, and that she would continue her outpatient care under chemotherapy treatment, with check-ups by nutrition, ophthalmology, oncology, and psychology. Additionally, the report from the group of Immediate Health Solutions of the National Superintendency of Health was attached, which stated the actions taken concerning the beneficiary. It was also mentioned that on April 5, 2018, another cycle of chemotherapy was started, which would be carried out every 21 days.

11. On September 18, 2019, the State reported that a clinical oncology meeting was held in August 2018, where [the specialists] deemed that it was not feasible to perform a surgical procedure and decided to continue with palliative chemotherapy. In addition, it was reported that on February 21, 2019, the Council of State revoked the ruling issued on December 13, 2017, by the Administrative Court of Cundinamarca. On September 11, 2020, the State requested the lifting of the precautionary measures. Subsequently, the State reiterated its request to lift the matter on December 3, 2020, March 3, April 28, and June 17, 2021.

B. Information provided by the representation

12. The Commission did not receive any communication from the representation. Despite the various requests for information made, the representation has not responded.

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

13. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with the human rights obligations set forth in the Charter of the Organization of American States, and in the case of the 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 irreparable harm to persons.

14. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that the precautionary and provisional measures have a double nature, both precautionary and protective. Regarding their 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. In the process

of reaching a decision, 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.

15. 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 keep, modify or lift the precautionary measures in force.” In this regard, the Commission should assess whether 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.

16. In analyzing the matter at hand, the Commission recalls that while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard of review, keeping such measures in force requires a more rigorous evaluation.² In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.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

17. In this matter, the Commission recalls that the precautionary measures were granted in 2018 in light of the available information, which indicated that Luz Angela Niño Chacon had metastatic cancer of the face and skin and that she was not receiving adequate medical treatment, although she had court decisions in her favor and despite her critical health state. Upon the granting of the precautionary measures and throughout the follow-up carried out by the Commission, the State sent reports detailing the actions taken to ensure the life and integrity of the beneficiary, as well as the consultation actions undertaken in favor of the beneficiary. Among them, the Commission observes that the beneficiary received medical treatment; chemotherapy and radiotherapy sessions were started; and, in addition, a hospital manager was assigned to permanently monitor and trace the beneficiary’s medical care. The Commission also stresses that a consultation meeting was held on February 23, 2018.

18. With regard to the representation’s response, the Commission notes that it has not submitted any type of information throughout the time that the precautionary measures have been in force. Thus, for approximately more than three years, the Commission has not received any response from the representation, even despite various requests for information made over time.

² I/A Court H.R., Provisional Measures regarding Mexico, Order of February 7, 2017, para. 16 and 17. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

³ Ibid.

⁴ Ibid.

19. In addition to the above, the Commission observes that the State has requested the lifting of the precautionary measures since September 11, 2020, reiterating the said request on 4 occasions: December 3, 2020, March 3, April 28, and June 17, 2021. In that sense, the request to lift the measures was forwarded to the representation in 2019 pursuant to Article 25(9), and no observations were received. Additionally, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present sufficient evidence and arguments to support its request.⁵ By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why.⁶ Similarly, Article 25, subparagraph 11 sets forth that the Commission may lift or review a precautionary measure when the beneficiaries or their representatives unjustifiably fail to provide the Commission with a satisfactory response to the requests made by the State for its implementation.

20. Considering the analysis carried out, and in response to the State's request to lift the measures, the Commission understands that the factual circumstances that called for the granting of these precautionary measures in favor of the beneficiary have significantly changed due to the medical treatment granted by the State. Thus, the Commission deems that according to the available information, it is not possible to identify any situation that currently fulfills the requirements of Article 25 of the Rules of Procedure, while approximately more than three years have gone by with no response from the representation. In view of the above and taking into account the exceptional and temporary nature of precautionary measures,⁷ the Commission deems it appropriate to lift these precautionary measures.

V. DECISION

21. The Commission decides to lift the precautionary measures in favor of Luz Angela Niño Chacón.

22. The Commission deems it appropriate to recall that, in accordance with Articles 4 and 5 of the American Convention in relation to Article 1.1. of the same instrument, the State of Colombia is obligated to respect and guarantee the rights of Luz Angela Niño Chacón, regardless of the lifting of these measures.

23. This decision does not preclude the IACHR from assessing a new request in accordance with the provisions of Article 25 of its Rules of Procedure.

24. The Commission instructs the Executive Secretariat of the IACHR to notify this resolution to the State of Colombia and the representation.

25. Approved on August 19, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda Arosemena de Troitino, Joel Hernández García and Edgar Stuardo Ralón Orellana, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary

⁵ Ibid.

⁶ Ibid.

⁷ 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 of Galdámez Álvarez *et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24