
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 36/2022**

Precautionary Measure No. 382-21
Ovidio Jesús Poggioli Pérez regarding Venezuela
July 13, 2022
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Ovidio Jesús Poggioli Pérez, in Venezuela. At the time of making the decision, the Commission considered that the beneficiary had been released and observed that his situation substantially changed. The IACHR decided to lift these measures and considered the lack of response from the State as serious in regard to the specific implementation of measures adopted while these measures were in place.

II. BACKGROUND INFORMATION

2. On May 13, 2021, the IACHR granted precautionary measures in favor of Ovidio Jesús Poggioli Pérez, who had been deprived of liberty by state agents on April 26, 2021. At the time these precautionary measures were granted, his whereabouts or location was unknown. The beneficiary is represented by Rafael Contreras Millán. On that occasion, the Commission requested information from the State prior to granting the measures in accordance with Article 25(5) of its Rules of Procedure, as well as pursuant to Article XIII of the Inter-American Convention on Forced Disappearance of Persons (“IACFDP”). Upon analyzing the submissions of fact and law provided by the applicant, the IACHR considers, from the applicable *prima facie* standard, that Mr. Ovidio Jesús Poggioli Pérez is in a serious and urgent situation, given that his rights to life and personal integrity face a risk of irreparable harm. Consequently, the IACHR requested that the Bolivarian Republic of Venezuela: a) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Ovidio Jesús Poggioli Pérez. In particular, the State is called on to report whether the beneficiary is in its custody and, where appropriate, the circumstances of his deprivation of liberty, or else, adopt the measures to determine his whereabouts or fate; and b) implement the actions aimed at investigating the events that led to the granting of this precautionary measure, so as to prevent such events from reoccurring.¹

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

3. 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 by requesting information from the parties. Following the granting, the Commission has requested specific information on the situation of the beneficiary from both the State and the representative on January 14, 2022. The Commission received no other response from the parties. Subsequently, on May 20, 2022, the Commission reiterated its request for information “in order to evaluate the call for the precautionary measures to remain in force”. The State did not respond to the requests for information, and, for its part, the representative provided a report on May 26, 2022.

¹IACHR. [Resolution 41/2021. Precautionary measures 382-21. Ovidio Jesús Poggioli Pérez regarding Venezuela](#). May 13, 2021 [only in Spanish].

4. In this communication, the representative reported that, after the beneficiary had been charged with the crimes of treason against the homeland and instigation of military rebellion, on June 14, 2021, the Military Judge ordered the dismissal of the case at the request of the prosecutor, finding that there was no crime. According to the representative, the above occurred as a result of interviews conducted with Mr. Poggioli. During these interviews, they were unable to obtain information to confirm or substantiate the crimes charged against him. Consequently, “the immediate termination of the judicial pretrial detention” was ordered and he was released on June 17, 2021.

5. The representative provided information on the military criminal proceedings against the beneficiary, by means of which, on May 3, 2021, the Military Judge ordered his detention at the National Centre for Military Prosecutions (*Centro Nacional de Procesados Militares, CENAPROMIL*). However, it was indicated that he was initially detained in the General Directorate of Military Intelligence (*Dirección General de Contrainteligencia Militar, DGCIM*), where he was allegedly held incommunicado for 30 days before being transferred to CENAPROMIL.

6. The representative indicated that he had submitted a brief to the National Human Rights Council of Venezuela on May 26, 2021, requesting an investigation into the alleged crime of torture against Mr. Poggioli at the DGCIM (however, he did not provide any details on the alleged torture). It was also noted that the Prosecutor’s Office was requested to investigate military commanders for allegedly falsifying the beneficiary’s police detention record, as well as against the trial judge and the prosecutors involved. On May 26, 2021, the National Ombudsperson’s Office was also requested to investigate torture and to initiate an investigation against the judge and prosecutors in the case. On May 31, 2021, an additional investigation was requested before the Attorney General’s Office with the aim of officiating the National Ombudsperson’s Office with overseeing the beneficiary’s rights. It was indicated that there has been no timely or adequate response from any of the identified agencies.

7. On another note, it was indicated that two complaints of arbitrary detention, forced disappearance, and torture were also filed with the Office of the United Nations High Commissioner for Human Rights. These complaints were filed on June 1 and 17, 2021.

8. Lastly, the representative indicates that, although the order to dismiss the case issued on June 14, 2021, and the subsequent release of the beneficiary has been an effective measure to protect his life and integrity, there has been no information about the circumstances of his deprivation of liberty that they consider irregular, and no actions have been implemented to investigate the facts.

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

9. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general oversight functions are established in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the IACHR Statute. The mechanism of precautionary measures is set forth in Article 25 of the Commission’s Rules of Procedure. 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 or to the subject matter of a petition or case before the organs of the inter-American system.

10. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have repeatedly established that precautionary and provisional

measures have a dual nature, protective and precautionary.² Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.³ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.⁴ Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under consideration by the organs of the inter-American system. The precautionary nature aims at safeguarding the rights at risk until the petition pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations. In the process of reaching a decision, according to Article 25(2) of its 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.

11. With regard to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establishes that “decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25(9) sets forth 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 shall assess whether the serious and urgent situation and the risk of irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider if new situations have subsequently arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

12. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.⁵ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁶ The Inter-American Court has indicated that with the passage of a reasonable period

² See in this regard: I/A Court H.R. [Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela](#), Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Case of Carpio Nicolle et al. v. Guatemala](#), Provisional Measures, Order of July 6, 2009, considerandum 16. [only in Spanish].

³ See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#), Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Case of Bámaca Velásquez](#), Provisional measures regarding Guatemala, Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#), Provisional Measures regarding Mexico, Order of the Court of April 30, 2009, considerandum 5; I/A Court H.R. [Matter of Milagro Sala](#), Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5, [only in Spanish].

⁴ See in this regard: I/A Court H.R. [Matter of Milagro Sala](#), Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish]; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#), Provisional Measures regarding Venezuela, Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#), Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6, [only in Spanish].

⁵I/A Court H.R. [Case of Fernández Ortega et al. Provisional measures regarding Mexico](#), Decision of February 7, 2017, Considerandums 16 and 17, [only in Spanish].

⁶*Ibid.*

of time without any threats or intimidation, in addition to the lack of imminent risk, may lead to the international protection measures being lifted.⁷

13. In this matter, the Commission recalls that the precautionary measures were granted in May 2021 in relation to the allegations of enforced disappearance, since it was indicated that, after his arrest, Mr. Ovidio Jesús Poggioli Pérez was neither at CENAPROMIL nor in DGCIM nor at the disposal of the tax or jurisdictional authorities, despite having been ordered his address in CENAPROMIL.⁸ The representative recently reported that the beneficiary has been at liberty since June 17, 2021, approximately one year after the order to dismiss the case for which he was arrested. Since then, the representative has not submitted any information to indicate that a situation placing the proposed beneficiary at risk persists after his release.

14. When analyzing the call for this matter to remain in force, the IACHR does not identify facts that may allow it to identify a situation that places the proposed beneficiary at risk under the terms of Article 25 of the Rules of Procedure. Subsequently, it considers that the circumstances that led to the granting of these precautionary measures have changed, as the whereabouts of the beneficiary are now known, and he is currently at liberty. In addition, the requirements of seriousness, urgency, and the need to prevent a risk of irreparable harm are no longer identified in this matter. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures,⁹ the Commission deems it appropriate to lift these measures.

15. The Commission regrets the lack of information which was requested from State under Article 25(5) of the Rules of Procedure of the IACHR and Article XIII of the Inter-American Convention on Forced Disappearance of Persons, to which Venezuela is a party. In this regard, the absence of accurate, detailed, and up-to-date information from the State, which was exercising custody over the beneficiary, has made it impossible for the Commission to have updated elements to timely assess the validity of imminent risk. The aforementioned is especially serious given the nature of the facts alleged at the time of granting, as well as the assessments made by the Commission in 2021.

16. On the other hand, the Commission takes note of the representative's allegations that the circumstances of Mr. Poggioli Pérez's detention have not been clarified and investigations have not been carried out. In this regard, as indicated at the time of granting these precautionary measures, the Commission wishes to recall that, by its own mandate, it is not called upon to make determinations on the criminal liability of individuals, nor to determine through this mechanism any violation of due process in the local investigations or proceedings, since this would incur an analysis on the merits, which is specific to a petition or case. The analysis carried out within the framework of the precautionary measures mechanism is exclusively based on the requirements established in Article 25 of its Rules of Procedure, in this case, regarding the call for these measures to remain in force. By way of reference, the IACHR recalls that a case of Mr. Poggioli Pérez for facts other than those presented herein was submitted to the Inter-American Court of Human Rights on June 18, 2021.¹⁰

⁷*Ibid.*

⁸IACHR. [Resolution 41/2021. Precautionary measures 382-21. Ovidio Jesús Poggioli Pérez in regard to Venezuela](#). May 13, 2021, para. 20, [only in Spanish].

⁹I/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, [only in Spanish].

¹⁰See: IACHR. Report No. 399/20. Case 13,310. Merits. Ovidio Jesús Poggioli Pérez. Venezuela. December 31, 2020; on the referral of the case to the Court, see: [Information on petitions and cases, Cases in the Court, 2021](#).

17. Finally, the Commission emphasizes that, regardless of the lifting of these measures, the State of Venezuela has the obligation to respect and guarantee the rights recognized in the applicable instruments.

V. DECISION

18. The Commission decides to lift the precautionary measures granted in favor of Ovidio Jesús Poggioli Pérez, regarding Venezuela.

19. The Commission instructs the Executive Secretariat to notify this resolution to the State of Venezuela and the representative.

20. Approved on July 13, 2022, by Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Esmeralda Arosemena de Troitiño; Joel Hernández García; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Mario López-Garelli
By authorization of the Executive Secretary