
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 56/2022**

Precautionary Measure No. 968-20
Mariano Valle Peters regarding Nicaragua
October 15, 2022
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) has decided to lift these precautionary measures in favor of Mr. Mariano Valle Peters, in Nicaragua. At the time of making the decision, the Commission assessed the change in circumstances and the request to have the measures lifted made by the representatives themselves. Upon not identifying compliance with the procedural requirements, the IACHR has decided to lift these measures under the terms of Article 25 of its Rules of Procedure.

II. BACKGROUND INFORMATION

2. On January 8, 2021, the IACHR granted precautionary measures in favor of Mr. Mariano Valle Peters, in Nicaragua. In this matter, the representatives were Viren Mascarenhas, Douglass Cassel, Morgan Bridgeman, Luisa Gutierrez, Isabel San Martin, and Lorna Maupilé, of “King & Spalding”. The request for precautionary measures alleged that Mr. Mariano Valle is the owner of Nicavisión S.A., a company that holds the ownership of *Canal 12*, a channel which opposes the current Nicaraguan government. The Commission analyzed the seriousness of the impact on Mr. Valle’s exercise of freedom of expression in Nicaragua’s context, characterized by the closure of democratic spaces. The Commission also observed that *Canal 12* was the “only television station with national coverage” that consistently broadcasts reports criticizing the government.

3. After analyzing the allegations of fact and law submitted by the parties, the Commission considered that the information submitted showed *prima facie* that Mr. Valle was in a serious and urgent situation of irreparable harm. Consequently, pursuant to Article 25 of its Rules of Procedure, and considering Nicaragua’s current context, the Commission requested the State of Nicaragua to guarantee the measures that would allow the beneficiary to continue exercising his right to freedom of expression, by both adopting relevant actions and refraining from adopting actions that hinder this right. Among these measures, the State was requested to refrain from proceeding with the decision to auction or sell the media outlet *Canal 12* until having assessed the impact that this decision would have on Mr. Valle’s exercise of his right to freedom of expression.¹ The precautionary measure was granted in a precautionary nature, in relation to Case 14.697,² where there were alleged violations of Articles 8, 13, 24, and 25 of the American Convention on Human Rights.

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

4. During the time the precautionary measures were in force, the Commission followed-up on the situation that is the subject matter of these precautionary measures by requesting information from the

¹ IACHR. [Resolution 3/2021](#). Precautionary Measure No. 968-20. Mariano Valle Peters regarding Nicaragua. January 8, 2021.

² Case 14.697 was filed on September 13, 2022.

parties. On January 8, 2021, the representatives submitted information. On September 13, 2021, the representatives submitted an additional report. On March 10, 2022, the representatives requested that the precautionary measures be lifted. On May 2, 2022, the Commission forwarded the representatives' reports to the State and granted it a 7-day period to submit its observations.

A. Information provided by the representatives

5. On January 8, 2021, the representatives reported that Mr. Valle is responsible for the general editorial guidance of *Canal 12*, through which he exercises his freedom of expression. In the tax proceedings before the courts, it was alleged that there were violations both in tax law and procedural law. There were reported violations regarding due process of law, right of defense, effective judicial protection and the principle of legality, in addition to discriminatory treatment. In addition, the representatives reported that there are appeals against court decisions regarding the taxes, but that these appeals have no suspensive effect. In other words, the appeals do not have the effect to suspend the auction or sale of *Canal 12* and the beneficiary's properties. Despite the fact that the judge could have suspended the effect of her order on September 30, 2020, she refused to do so. The representatives indicated that the auction was allegedly not held due to the judicial vacation for Christmas in Nicaragua.

6. On September 13, 2021, the representatives reported that the State did not proceed with the auction or forced sale of *Canal 12*. It was reported that after negotiations between the parties (no details of the negotiations were provided), the State did not persist with their requests for the payment of alleged late charges or tax fines. In exchange for the reportedly unpaid taxes, the State allegedly accepted three empty plots of land -Mr. Valle's personal property- and a vehicle. It was noted that Mr. Valle still has his private home and personal car. No sum was paid for the properties of *Canal 12* and in that sense, Mr. Valle was able to continue with his transmissions. On July 15, 2021, the Fourth Oral Civil District Court of Managua District (*Juzgado Cuarto Distrito Civil Oral Circunscripción Managua*) accepted the satisfaction of claims regarding payment of the Directorate General of Taxes. In addition, it ordered to lift the seizures of the properties, and instructed the definitive close of the proceedings.

7. Lastly, on March 10, 2022, the representatives withdrew from the request and sought that the precautionary measures be lifted as *Canal 12* continues to broadcast its news and programs, and Mr. Valle still has ownership of his home and personal vehicle.

B. Information provided by the State

8. The State has not submitted any information since the precautionary measures were granted. All deadlines being expired, the Commission had not received any reply from the State.

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.³ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.⁴ 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.⁵ 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 respect to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establishes that “[t]he 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 should assess if the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider whether new situations have subsequently arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

³ See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). 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. [Available only in Spanish]

⁴ 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. [Available only in Spanish]

⁵ 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 [Available 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. [Available only in Spanish].

12. Similarly, the Commission recalls that 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.⁶ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁷ The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, in addition to the lack of imminent risk, may lead to the international protection measures being lifted.⁸

13. When analyzing whether these precautionary measures should remain in force, the Commission observes that the representatives themselves requested that these precautionary measures be lifted given the change in circumstances. In this regard, the Commission recalls that Article 25(6)(c) of its Rules of Procedure provides the following:

“6. In considering the request the Commission shall take into account its context and the following elements: [...] c. the consent of the potential beneficiaries when the request is presented by a third party unless the absence of consent is justified.”

14. Pursuant to these regulations, and based on the periodic assessment of the precautionary measures under the terms of Article 25(9) of the Rules of Procedure, the Commission considers that the representatives are not willing to continue with the proceeding at hand. In this regard, it is not the representatives' will to continue with the mechanism of precautionary measures. This is particularly relevant as it is one of the elements that the Commission considers when analyzing requests for precautionary measures and keeping them in force. Additionally, it is recalled that the measure was granted in its precautionary nature until the related petition is resolved. In this regard, the representatives have submitted a withdrawal of the petition, and have therefore expressed their intention to suspend the respective procedure. Consequently, insofar as there is no willingness to continue to process the request, the precautionary measures therefore lose their protective objective.

15. With regard to the change of circumstances, based on the information provided by the representatives, the Commission understands that Mr. Valle has not been the subject of any event that could be categorized as established in Article 25 of the Rules of Procedure. In addition, the representatives have indicated that *Canal 12* continues to operate with no hinderance, being that it reportedly broadcasts its news and programs to date. In this regard, the Commission observes that the representatives reported that the parties carried out negotiations, but did not provide further details.

16. In this sense, considering the previously presented analysis, and in response to the representatives' request to withdraw, the Commission understands that it does not have elements to indicate that the requirements of Article 25 of the Rules of Procedure have been met. In this regard, the Commission considers that these precautionary measures should be lifted.

17. Lastly, the Commission regrets the lack of response from the State insofar as it prevents this Commission from being able to assess the measures it has adopted in favor of the beneficiaries. The foregoing also prevents the State from voicing its views on the representatives' allegations, as well as the observations that it may wish to present in the context of these proceedings.

⁶ 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

⁷ Ibid.

⁸ Ibid.

V. DECISION

18. The Commission decides to lift the precautionary measures granted in favor of Mariano Valle Peters, in Nicaragua.

19. The Commission recalls that the lifting of these measures does not prevent the representatives from filing a new request for precautionary measures should they consider that there is a situation that meets the requirements established in Article 25 of the Rules of Procedure.

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

21. Approved on October 15, 2022, by Julissa Mantilla Falcón, President; Esmeralda Arosemena de Troitiño; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary