
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 72/2022**

Precautionary Measure No. 603-22
Child K.L.R. regarding Mexico¹
December 19, 2022
Original: Spanish

I. INTRODUCTION

1. On August 4, 2022, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by Ms. K.E.R.A.² (“the applicant”), urging the Commission to request that the Republic of Mexico (“the State” or “Mexico”) adopt the necessary measures to protect the rights of her daughter, child K.L.R. (“the proposed beneficiary”). According to the request, the proposed beneficiary has been missing since she was unlawfully abducted by her father on February 8, 2020. The disappearance of the child has been reported to the competent judicial bodies. However, to date, it was alleged that the authorities have not promoted suitable and effective actions to locate her, nor have they defined the legal custody and visiting arrangements of the parents. Finally, it was alleged that the mother has no contact with her daughter.
2. In accordance with Article 25(5) of its Rules of Procedure, the IACHR requested information from the applicant, who submitted her response on September 1 and October 18, 2022. Subsequently, the IACHR requested information from the State, who submitted its response on November 4, following a repeated request by the Commission.
3. Upon analyzing the submissions of fact and law offered by the parties, the Commission considers that the instant matter meets *prima facie* the requirements of seriousness, urgency, and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, it requests that the State of Mexico immediately adopt the necessary, appropriate, and effective measures to protect the rights to protection of the family, identity, and personal integrity of the child K.L.R., determining her whereabouts and safeguarding, in accordance with her best interests, her ties with her mother, in accordance with the applicable international standards on the matter.

II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES

A. Information provided by the applicant

4. The proposed beneficiary is a 5-year-old girl (born November 9, 2017) who lived with her parents in Mexico City. According to the request, the mother of the proposed beneficiary decided to separate

¹ In accordance with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Joel Hernández García, a Mexican national, did not participate in the debate and deliberation of this matter.

² The IACHR decides to keep the identity of the applicant confidential given the nature of the alleged facts.

from the father due to alleged acts of domestic violence against her. The mother also indicated that she had been subjected to threats and “judicial persecution.” She accuses her former partner of being involved in alleged acts of rape against children. On February 8, 2020, the father allegedly abducted the girl illegally. Since then, the proposed beneficiary would be unaccounted for, without the mother having had contact or news of her location.

5. The applicant indicates that her daughter’s disappearance has been reported to the competent authorities. First, she reported that she had filed for divorce,³ which is being processed before the Eleventh Family Court of Mexico City. The judicial authority has purportedly sent official letters to different bodies, such as the National Commission for the Search of Persons, the Collaboration Unit related to people lost or not located in the State of Morelos, and the Office of the Attorney General (*Fiscalía General de la República*), in order to carry out the corresponding actions to locate child K.L.R. On March 8, 2022, the Office of the Attorney General reportedly managed to find the girl in the State of Morelos. It was indicated that the direction in which the child was found is different from that reported by the father in the divorce process. The girl was taken to Mexico City and brought before the Eleventh Family Court of Mexico City on the same day, at night. This was reportedly the only time the mother was able to see her daughter since her abduction on February 8, 2020.
6. Following the presentation of the girl to the Court, the judge hearing the case decided not to determine custody immediately, setting the date of March 17, 2022, for the determination of the legal status of the girl. On the occasion, the applicant reported that the federal police warned the judge that the girl would no longer appear because they had to search all over the country. It was also indicated that the former partner was very difficult to trace. The applicant reported that she had asked the father to provide an address for the child’s location. In response, the father allegedly indicated the same address reported in the divorce lawsuit. Such an address would not correspond to the address at which the Prosecutor’s Office found the child. It was added that the police had tried several times to locate the girl at the home in Morelos, and they had allegedly received an answer that she was not there. Nevertheless, the judge upheld her decision. On the date determined by the judge, the father failed to produce the child. Since then, the applicant states that she has had no further contact with or news of her daughter.
7. It was reported that the father filed an *amparo* suit⁴ in the Fourth District Court for Civil Matters in Mexico City. He is said to have obtained an *amparo* to suspend the presentation of the child for the purpose of determining custody, guardianship, and child support, until the divorce suit is resolved. On March 15, 2022, the applicant filed an *amparo* action before the Federal Judiciary⁵ against the Fourth District Court for Civil Matters and the Eleventh Family Court of Mexico City. The applicant alleged that these bodies had failed to guarantee the rights of child K.L.R. by allowing her to return to the status of disappeared person, even though they were aware of the previous situation of illegal detention by her father.
8. The applicant attached a copy of the decision of the First District Judge in Administrative Matters in Mexico City (Federal Judiciary). In that decision, dated August 3, 2022, the judge declared that he lacked authority to hear the constitutional complaint. However, in order to protect the rights of the child K.L.R., he ordered the following:
 - i) that the responsible authorities immediately cease any act aimed at maintaining the alleged enforced disappearance of the child;

³ Divorce case 50/2020.

⁴ *Amparo* case 250/2022 and its accumulated 251/2022 and 252/2022.

⁵ Indirect *amparo* case 469/2022.

- ii) that effective and appropriate measures be taken to locate, care for, and protect the child;
 - iii) that the responsible authorities provide all the information that may be conducive to locating the child;
 - iv) to report on the case within 24 (twenty-four) hours.
9. On August 9, 2022, the applicant requested through the Federal Judicial Branch Services Portal the opening of an action against the Fourth District Court for Civil Matters in Mexico City and the Eleventh District Court for Family Matters in Mexico City for failure to comply with the aforementioned judicial decision. In the complaint, the applicant challenged the failure of those courts to take specific measures to locate the child.
 10. In relation to the foregoing, the Judge of the Eleventh Family Court of Mexico City submitted a report in which she indicated the actions taken in the case. First, she indicated that she had ordered the search, location, recovery, and presentation of child K.L.R. Then, she reported that the girl was located and presented in good physical condition before the Court. She added that an agreement was attempted with the parents. In the absence of an agreement, the date and time were set for the interview with the girl child to determine the provisional measures relating to custody, guardianship and living arrangements. The judge mentioned that she has made sure to collect information such as the addresses, telephone numbers, and e-mail addresses of the child's parents, so that she can be located at any time without having to resort again to police support. Finally, she reported that, in order to safeguard the integrity and safety of the child, she sent a communication to the National Institute of Migration to ensure that the child and her father are not allowed to leave the country until further notice or judicial authorization. In this regard, she indicated that she had not issued any decision to maintain the enforced disappearance of child K.L.R.
 11. In a decision of August 26, 2022, the First Unitary Court in Civil, Administrative and Specialized Matters in Economic Competition, Broadcasting and Telecommunication of the First Circuit declared partially founded the motion filed by the applicant,⁶ recognizing the lack of State diligence in safeguarding the rights of child K.L.R. The Court noted that:

“In view of these premises, it is evident that in the instant case file it has not been demonstrated that as of the date on which the plaintiff was granted an immediate suspension (August 3, 2022), the Eleventh Family Court Judge of Mexico City has issued effective and suitable measures to locate child K.L.R., as well as those that are pertinent for her attention and protection, in addition to the fact that [the judge] did not submit the report requested due to the incident of breach of suspension indicated; therefore, it is unquestionable that in the case at hand there is a breach of the suspension granted in the order of August 3, 2022, with respect to the responsible authority in question.”
 12. In addition, the aforementioned decision noted that the divorce suit is pending before the Eleventh Family Court of Mexico City and that the aforementioned court is also deciding on custody, guardianship, visiting arrangements, and child support. In this regard, it was stated that:

“that in the present case, what concerns an eventual search, location, recovery and presentation before a judicial authority of the minor child K.L.R, is within the inherent powers of the aforementioned family authority (Eleventh Family Court of Mexico City); that is to say, if the aforementioned underage person is at its disposal, it is evident that within its powers is

⁶ Notebook of incompetence derived from the trial of indirect *amparo* 73/2022

to provide directly and immediately what concerns effective and suitable measures to locate the aforementioned infant, as well as those that are pertinent for her care and protection.”

13. In this regard, the Eleventh Family Judge of Mexico City was determined,

“that in the term of twenty-four hours counted from the moment it receives the corresponding official letter, it comply with the immediate suspension granted to the complainant by order issued on August 3, 2022, that is to say, it will have to demonstrate that it has taken effective and suitable measures to locate the child [K.L.R.] [...], as well as the pertinent measures for her care and protection, or, alternatively, to state and justify the reasons for its inability to do so, warning that if it does not do so, she will be reported to the Federal Public Prosecutor’s Office for the crime established in Article 262, section III of the relevant legislation.”

14. On October 18, 2022, the applicant submitted information reiterating that her daughter is still missing and that neither parent has been legally awarded custody of her. She stressed that she fears for her daughter’s safety, given the suspicions that the father is “sexually disturbed”. She also indicates that her former partner is trying to silence her by filing criminal charges against her, which is why she reiterates her request for precautionary measures.

B. Response of the State

15. The State submitted information on November 4, 2022, on the absence of the requirements of Article 25 of the Rules of Procedure; actions implemented before the Superior Court of Justice of Mexico City (TSJDMX); and actions implemented by the Federal Judiciary.
16. The State indicated that it understands that the rights of the child are preserved, which is why the request does not meet the requirements of Article 25 of the Rules of Procedure. It also reported that the divorce proceedings between the parents are still pending before the Eleventh Family Court of Mexico City and that the custody, guardianship, visitation, and cohabitation of the child have not yet been ordered. On the other hand, it was noted that on 8 March 2022, the child was presented by State officers attached to the Office of the Attorney General (FGR), certifying the secretary of agreements that she was in good physical condition, without emotional alteration and with clothes in good condition. The father was requested to state his address, and the National Institute of Migration was notified to prevent him and the child from leaving the country. The Ministry of Communications and Transport was also informed to prevent the issuance of airline tickets or land transport.
17. Subsequently, the State provided information on the *amparo* proceedings pending in the Fourth District Court for Civil Matters in Mexico City.⁷ In this regard, the State reported that the father had been able to obtain a provisional suspension in court to prevent the conversation or interview with the child from taking place, in order to avoid the consummation of an act that could imply her revictimization. The mother had filed a motion to revoke the decision, which was declared unfounded.
18. With regard to the applicant’s situation, the State reported that the court ordered, in an order dated August 3, 2020, the personal notification of the father, to the effect that he should avoid acts of intimidation, offenses, threats, or causing annoyance, both physical and psychological, as well as to refrain from approaching the home where he lives and his place of work, at a distance of no less than 200 meters, under penalty of a fine.
19. With respect to the actions before the Federal Judiciary, the State added that the applicant has filed various indirect *amparos* related to the divorce case for the alleged failure to return the child, as well

⁷ 250/22 and its accumulated 252/2022.

as for the lack of a ruling on custody and guardianship in the original trial. In this regard, the State added that the Mexico City Commission for the Search for Persons reported that files have been opened with the aim of searching for child K.L.R. It was reported that these files have followed their corresponding procedures and have included information such as the child's general information, family contacts, and identification and tracking data. The State also reported that it had opened a cooperation booklet, which shows that it proceeded to carry out the corresponding actions and measures to locate child K.L.R. The State reported that the responsible authorities took effective and suitable measures to locate the child. It also reported that, by decision of August 26, 2022, it was determined that the judge in the case had not demonstrated that she had ordered effective and suitable measures to locate the child, as well as those that are pertinent for her protection and care. However, the State indicated that the proceedings have not yet reached a final judgment and that they are still being integrated and substantiated.

20. For all these reasons, the State reported that the mother has not been denied access to justice or to the means of defense that the judicial system provides for resolving disputes, whether criminal or family related. In addition, it reported that the delays in the proceedings are due to multiple reasons, such as the procedural burdens and the COVID-19 pandemic. Finally, the State emphasized that there are various alerts in place to restrict the child's departure from the country and the mobility of the child and her father, who has custody of her while awaiting judicial decisions on custody.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

21. 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 18(b) of the Statute of the IACHR, and the precautionary measures mechanism is described 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 an irreparable harm.
22. The Inter-American Commission and the Inter-American Court of Human Rights ("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.⁸ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.⁹ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the persons proposed as beneficiaries would be left in case the measures are not adopted.¹⁰ Regarding their precautionary nature, these measures have the purpose

⁸ 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.

⁹ 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].

¹⁰ See in this regard: I/A Court H.R., Matter of Milagro Sala. Request for Provisional Measures against Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, Considerandum 5; I/A Court H.R., Matter of El Rodeo I and El Rodeo II Capital Judicial Internment. Matter of the Internado Judicial Capital El Rodeo I and El Rodeo II. Provisional Measures regarding Venezuela. Judgment of the Court of February 8, 2008, Considerandum 9; I/A Court H.R., Case of the Plácido de Plácido Penal Institute of Venezuela. Case of the Plácido de Sá Carvalho Criminal Institute. Provisional Measures regarding Brazil. Judgment of the Inter-American Court of Human Rights of February 13, 2017, Considerandum 6.

of preserving legal situations while under the consideration of the IACHR. They aim to safeguard 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 (*effet utile*) 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.¹¹ For the purposes of making a decision, and in accordance with 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.
23. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. Rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.¹² Preliminarily, the Commission wishes to clarify that in the present proceeding it is not for the Commission to decide whether the decisions taken by the different judicial authorities are in accordance with domestic law or whether they are compatible with the American Convention and applicable standards.
24. As indicated in the *Matter of G.Y.G.R. regarding Mexico* in 2019,¹³ the Commission considers it pertinent to clarify that it is not called upon to rule on whether the process being processed in the domestic sphere related to the guardianship, custody, visitation and cohabitation of the proposed beneficiary is being carried out in a manner compatible with the American Convention, or in accordance with the special obligations to protect the rights of children, since such claims require determinations on the merits that would be better suited to the petition and case system. Similarly, it is not appropriate in the instant proceeding to rule on the individual or criminal liabilities of the persons involved in the allegations presented in the case file, which is the responsibility of the domestic authorities in the State of Mexico. The Commission’s analysis below relates exclusively to the requirements of seriousness, urgency, and risk of irreparable harm established in Article 25 of its Rules of Procedure, which can be resolved without making any determinations on the merits.
25. From the information available in the case file, based on the allegations of the applicant and the State’s response, the Commission observes the following factual framework:

¹¹ 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 7; I/A Court H.R. *Matter of “El Nacional” and “Así es la Noticia” newspapers*. Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. *Matter of Luis Uzcátegui*. Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

¹² In this regard, for instance, referring to provisional measures, the Inter-American Court has indicated that a minimum of detail and information is required to assess, *prima facie*, whether an extremely serious and urgent situation exists. I/A Court H.R., *Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA*. Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

¹³ IACHR, *G.Y.G.R. regarding México* (PM-364-17), Resolution 38/2019, July 29, 2019, para. 24

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- i. The child is currently 5 years old;
 - ii. The mother is said not to have had frequent contact with the child since February 8, 2020, the date on which the father allegedly took the child. On that date, the child would have been approximately 2 years old;
 - iii. On 3 August 2020, the competent judicial body ordered the father to refrain from intimidating, insulting, threatening, or causing physical or psychological discomfort, and to refrain from approaching the mother's home or place of work within a distance of at least 200 meters, subject to a fine;
 - iv. Since February 8, 2020, the mother was only able to see her daughter once (March 8, 2022), when the authorities found her and brought her before the Eleventh Family Court of Mexico City. Since then, the mother has reportedly not established relationship or visitation with the proposed beneficiary or had knowledge of the exact place where she would be;
 - v. Since 2020, a divorce suit has been pending concerning the parents of the proposed beneficiary before the Eleventh Family Court of Mexico City, in the context of which the custody, guardianship, visitation, and cohabitation of the child would also be resolved. These proceedings are still pending to date.
 - vi. The Judge of the Eleventh Family Court of Mexico City reportedly ordered the search for the child, who was located on March 8, 2022, at an address different from the one provided by the father in the divorce proceedings. After that date, the girl returned to her father and, according to the State, she would be under his "safekeeping";
 - vii. After the child was located, the same judicial authority decided to set March 17, 2022, as the date for the determination of the child's legal status;
 - viii. The father was also requested to state his address; the National Institute of Migration was notified to prevent the father and the child from leaving the country; and the Ministry of Communications and Transport was informed to prevent the issuance of airline or land transport tickets.
 - ix. The father obtained a favorable decision to provisionally suspend the holding of a talk or interview with the child, in order to avoid her re-victimization. The decision was appealed by the mother, but the request was declared unfounded;
 - x. On August 3, 2022, the First District Judge in Administrative Matters of Mexico City (Federal Judiciary) ordered the immediate cessation of any act that maintains the alleged "forced disappearance" of the girl. It also ordered that she be located and protected, giving a period of 24 hours for the submission of the respective report;
 - xi. On August 26, 2022, the First Unitary Court in Civil, Administrative and Specialized in Economic Competition, Broadcasting and Telecommunication Matters of the First Circuit determined that the competent judicial authority had not demonstrated that it had dictated effective and suitable measures to locate the child, as well as those relevant for her protection and care.
26. In her last communication, the mother reiterated that her daughter is still "missing" and that her custody has not been legally defined. For its part, the State indicated that the proceedings do not yet have a "final judgment" and are being integrated and substantiated, and that the mother has had access to justice in the country. For the State, the "delays" in the proceedings are due to multiple reasons.

27. When analyzing compliance with the seriousness requirement, the Commission recalls that the organs of the inter-American system have recognized that, in relation to some processes, such as those related to adoption, guardianship, or custody, in which children may suffer separation from their biological family, the rights to personal integrity, identity, and family life may be at risk, requiring precautionary protection.¹⁴ Specifically, they have repeatedly recognized that delay or lack of response in guardianship and custody cases may entail irreparable harm to children's rights to family, identity, and psychological integrity.¹⁵ In fact, the Inter-American Court has recognized that in cases involving their rights, the domestic authorities have the duty to "expedite" the proceedings *proprio motu* - considering the duty of special protection that must be afforded to children - and that questions of guardianship and establishment of a visiting regime "[...] are framed in processes that do not present special complexities and are not unusual for States."¹⁶ In the framework of precautionary measures, the Commission has ruled on this subject in the Matter of G.Y.G.R. regarding Mexico.¹⁷
28. The Commission has recognized that the passage of time inevitably constitutes a defining element when assessing the possible existence of a situation presenting a risk, taking into consideration the protection needs in each case according to the specific circumstances. In effect, the right to protection of the family under Article 17 of the American Convention "[...] entails, among other obligations, to promote, in the broadest sense, the development and strength of the family unit."¹⁸ Likewise, in light of Article 8 of the Convention on the Rights of the Child, the Inter-American Court has pointed out the importance that this right has with the right to identity in the case of children,¹⁹ highlighting the role that the biological family plays in this process.²⁰ In this sense, the prolonged separation of children from their family environment is likely to seriously affect the emotional ties with their relatives,²¹ causing an emotional and psychological impact that may have repercussions on their integrity insofar as it may jeopardize the harmonious development of their personality.²² In the same sense, the inter-American system has recognized that, in the case of children and adolescents, the right to identity is related to the right to family life, in view of the role played by the family in the set of attributes and characteristics that allow the individualization of the person in society.²³ In addition, the concrete

¹⁴ I/A Court H.R., Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay, Matter of L.M., para. 16; and IACHR, G.Y.G.R. regarding Mexico (PM-364-17), Resolution 38/2019, 29 July 2019, para. 25.

¹⁵ I/A Court H.R. Matter of L.M. regarding Paraguay. Provisional Measures. Order of the Inter-American Court of Human Rights of 1 July 2011, paras 12, 15-16, 19; IACHR, Child A.R. regarding Argentina (MC 356-16), Resolution 26/2017, 27 July 2017, para 24; IACHR, Matter of María and her son Mariano regarding Argentina (MC 540-15), Resolution 22/2016, 12 April 2016, paras 2 and 11; IACHR, *The Right of the Child to a Family*, 2013, para 174.

¹⁶ I/A Court H.R., Case of Fornerón and daughter v. Argentina. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 242, paras. 67 and 69; IACHR, Child A.R. v. Argentina (MC 356-16), Resolution 26/2017, 27 July 2017, para. 24; I/A Court H.R., Resolution of the Inter-American Court of Human Rights of 1 July 2011, Provisional Measures regarding Paraguay, Matter of L.M., para. 16.

¹⁷ IACHR, G.Y.G.R. regarding México (PM-364-17), Resolution 38/2019, July 29, 2019, para. 24

¹⁸ I/A Court H.R., *Case of Fornerón*, para. 116.

¹⁹ I/A Court H.R., Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 122, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_221_esp1.pdf

²⁰ I/A Court H.R., Case of Gelman, para. 124.

²¹ IACHR, Request for Provisional Measures to the Inter-American Court of Human Rights in relation to the child LM", May 18, 2011, para. 54. In this sense, the Commission has understood "that the factor of age and the passage of time are crucial in the establishment of bonds of affection, the creation of family ties, the development of personality and the formation of the child's identity, particularly at an early age, therefore, there is a duty of exceptional diligence given that the time factor can cause irreparable damage to the child". IACHR, *The Right of the Child to the Family. Alternative Care Ending institutionalization in the Americas*. October 17, 2015, para. 316

²² I/A Court H.R., Resolution of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay, Matter of L.M., Considerandum 14 and 18.

²³ The Inter-American Juridical Committee has considered that the right to identity is a fundamental human right that can be conceptualized, in general, as the set of attributes and characteristics that allow the individualization of the person in society and, in this sense, it includes several other rights contained in the Convention, depending on the subject of rights in question and the circumstances of the case. Inter-American Juridical Committee, Opinion "on the scope of the right to identity", resolution

circumstances and the specific context in which the separation of the child from his or her parents takes place have a differentiated impact both on the child's personal integrity and on his or her comprehensive and harmonious development, with the child's personal factors also having an impact, including his or her age and level of development.

29. In the instant matter, the Commission observes that it is uncontroversial from the information in the case file that: i. the biological mother has not had a regular relationship with her daughter since February 2020; ii. the following issues have not yet been defined in the domestic judicial process: guardianship, custody, visiting arrangements, or the child's cohabitation with her biological family; iii. approximately 3 years have passed since the child's legal situation has not been defined at the judicial level, following the separation from her biological mother; iv. the child has not had regular contact with her mother since she was approximately 2 years old, and is currently 5 years old; v. the existence of any legal impediment for the mother to have contact with her daughter has not been identified; vi. within the framework of the domestic judicial process, the child could only be located until March 8, 2022; and vii. Subsequently, the mother indicated that she had no further knowledge of her exact whereabouts.
30. Although the issues related to aspects such as custody and guardianship and, ultimately, the rights of the mother with respect to the child, are aspects related to the merits of the process being followed at the domestic level, on which it is not appropriate to make a statement on this occasion, the Commission understands that the alleged delay in the decision on those aspects has kept the proposed beneficiary in a prolonged situation of undefinition and uncertainty with respect to her contact and relationship with her biological mother. In this scenario, the Commission observes that the passage of time is a determining factor in matters affecting children's rights, which, given the lack of contact during a significant part of the child's childhood, is likely to have a severe impact on her rights, as explained above.
31. The above considerations are particularly worrisome in light of the assessments made by domestic judicial authorities in August 2022. According to the case file, recent domestic judicial decisions, dated August 3 and 26, 2022, found that effective and adequate measures had not been taken to locate the child and protect her rights. Recently, the Commission notes that it was decided to "provisionally suspend" an interview with the child to avoid her re-victimization. In this regard, the Commission notes that while it is not aware of the internal assessments that led to that decision, it is important to recall that any assessment of the best interests of the proposed beneficiary must take into consideration her current circumstances.²⁴ In addition, measures affecting the right to a family "[...] must respect the principles of necessity, exceptionality and temporality,"²⁵ and be aimed at

CJI/doc. 276/07 rev. 1, of 10 August 2007, paragraph 12, ratified by resolution CJI/RES.137 (LXXIO/07), of 10 August 2010. The Inter-American Court of Human Rights and the Commission have also established its relationship to the right to family life. I/A Court H.R., Resolution of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay, Case L.M., para. 15.

²⁴ See: IACHR, *Child A.R. v. Argentina* (MC 356-16), Resolution 26/2017, 27 July 2017; I/A Court H.R., *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02 of 28 August 2002. Series A No. 17, para. 61. The IACHR has affirmed that the principle of the best interests of the child cannot be cited in the abstract, but must be objectively justified. See: IACHR, *The Right of the Child to a Family*, 2013, para. 157.

²⁵ IACHR, *The Right of the Child to the Family*, 2013, para. 143; I/A Court H.R., *Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay*, Matter of L.M., para. 14; I/A Court H.R., *Case of Fornerón and daughter v. Argentina*. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 242, para. 121.

preserving and restoring the rights of the child, including the right to a family.²⁶ As a corollary of these principles, the State has the duty to periodically review the measures implemented.²⁷

32. The Commission takes into account that, in addition to the lack of definition of the child's situation, she is allegedly estranged from her biological mother, who has no knowledge of her exact whereabouts, and three years have already passed without an effective relationship with the child in a judicial proceeding that, as the State indicated, has not yet resulted in a judgment. On the other hand, the Commission does not have any information that would indicate that the situation in which the child is currently in would be in her best interests.
33. In view of the foregoing, the Commission considers that, from the *prima facie* standard applicable to the precautionary measures mechanism, the rights to family, identity, and personal integrity of the child are at serious risk.
34. As for the requirement of urgency, the Commission notes that the risk identified is already materializing in the child's rights in the absence of a judicial determination on her legal situation and the establishment of a timely and effective relationship regime. In these circumstances, the passage of time is likely to aggravate the situation and hinder further measures to re-establish the family relationship, which justifies the adoption of measures with immediate effect. Domestic judicial authorities have ruled along similar lines, ordering that effective measures be taken to protect their rights.
35. With regard to the requirement of irreparable harm, the Commission considers that it has been met, given that if the loss of the family bond materializes, with an impact on personal integrity and the right to identity, as a result of the situation described above, the harm that would be caused would be likely to last and extend throughout the child's adult life in circumstances where, in fact, a vital period of the child's childhood has already elapsed.
36. Finally, regarding the allegations that the mother has presented about her former partner, particularly those referring to the commission of acts of a sexual nature, the Commission notes that, from the information received to date, it does not appear that the mother has filed a criminal complaint against her former partner, which would have allowed the State to conduct the corresponding investigations or to clarify the facts. The Commission has no evidence to assess any possible criminal decision regarding the father. Nor does the Commission have any evidence to indicate whether such allegations have been formally presented in the proceeding in which the custody, guardianship, visitation, and cohabitation of the child are determined. In this regard, the Commission understands that such allegations should be assessed by the competent national authorities, if they have been presented, and in the best interests of the child.
37. In this regard, the Commission recalls that certain cases, such as violence, negligent treatment, or exploitation, which take place in the family, require State interference through protective measures,

²⁶ See also: I/A Court H.R., Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay, Matter of L.M., para. 17. IACHR, *The Right of the Child to a Family*, 2013, para. 172.

²⁷ "The purpose of the periodic review of the temporary measure of protection is to determine whether the measure fulfills its objective, and therefore, whether it responds to the best interests of the child. In addition, periodic monitoring should help to ensure that the application of the measure allows for the prompt reintegration of the child into his or her family, provided that it is in his or her best interests"; and also, "[t]he review should be based on the technical assessments presented by the multidisciplinary teams, and the motivation should be objective, suitable and sufficient, and based on the best interests of the child. Furthermore, the opinion of the child and that of his or her parents, family and other relevant persons in the child's life must be heard when deciding on the conditions for the application, maintenance, modification or termination of the protection measure." (IACHR, *The Right of the Child to a Family*, 2013, paras. 145 and 244 respectively) See also paras. 173, 196, 243-246.

which may include the temporary or permanent separation of children from their parents.²⁸ States have an immediate obligation to take “[...] all appropriate and effective measures to prevent and respond to violence against children,”²⁹ provided that such measures are duly justified on the basis of the principle of their best interests.³⁰

V. BENEFICIARY

38. The Commission declares that the beneficiary of this precautionary measure is the child K.L.R., who is duly identified in these proceedings.

VI. DECISION

39. The Inter-American Commission considers that the matter at hand meets *prima facie* the requirements of seriousness, urgency, and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, it requests that the State of Mexico immediately adopt the necessary, appropriate, and effective measures to protect the rights to protection of the family, identity, and personal integrity of the child K.L.R., determining her whereabouts and safeguarding, in accordance with her best interests, the ties with her mother, in accordance with the applicable international standards on the matter.
40. The Commission requests Mexico to report, within 15 days of the date of this resolution, on the adoption of the precautionary measures requested and to update that information periodically.
41. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment of any violation of the rights protected in the applicable instruments.
42. The Commission instructs its Executive Secretariat to notify the State of Mexico and the applicants of this resolution.
43. Approved on December 19, 2022, by Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Margarette May Macaulay, Second Vice-President; Esmeralda Arosemena de Troitíño; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Jorge Meza Flores
Assistant Executive Secretary

²⁸ IACHR, *The Right of the Child to a Family*, 2013, paras. 122, 179. See also: I/A Court H.R., *Case of Atala Riffo and Girls v. Chile. Merits, Reparations and Costs. Judgment of February 24, 2012. Series C No. 239*, para. 164. IACHR, *The Right of the Child to the Family*, 2013, para. 128; I/A Court H.R., *Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay, Case L.M.*, paras. 14 and 16.

³⁰ I/A Court H.R., *Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay, Matter of L.M.*, para. 14; I/A Court H.R., *Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17*, para. 73; IACHR, *The Right of the Child to a Family*, 2013, para. 149.