INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLUTION TO LIFT PRECAUTIONARY MEASURES 31/2023

Precautionary Measure No. 170-18
Óscar Álvarez Rubio regarding El Salvador
May 29, 2023
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Oscar Álvarez Rubio who disappeared in El Salvador. At the time of making the decision, the Commission assessed the actions taken by the State during the time these measures were in force. Furthermore, it noted that the last time the beneficiary’s representation provided information was in 2018, before this measure was granted. Despite the State’s request to lift the measures, and repeated requests from the IACHR to the representation for their comments, no response was received. Upon not identifying compliance with the procedural requirements, the IACHR has decided to lift these precautionary measures.

II. BACKGROUND INFORMATION

2. On May 3, 2018, the IACHR granted precautionary measures in favor of Óscar Álvarez Rubio, who disappeared on January 4, 2018. According to the request for precautionary measures, the proposed beneficiary was deported from the United States in September 2017. In January 2018, he reportedly disappeared from his aunt’s residence, and his relatives there did not have any information on his whereabouts or fate. Upon analyzing the submissions of fact and law, the Commission considered that the information showed, prima facie, that the beneficiary and his family were facing a situation of risk which met the requirements set forth in Article 25 of the IACHR Rules of Procedure. Consequently, the Commission requested that the State of El Salvador: a) take the necessary measures to protect the rights to life and personal integrity of Mr. Oscar Álvarez Rubio and, in particular, to determine his whereabouts or fate; b) report on the actions taken to investigate the alleged facts that gave rise to the adoption of this precautionary measure.³

3. The representation requested that their identity remain confidential.

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

5. The State submitted observations on the following dates:

<table>
<thead>
<tr>
<th>Year</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>May 29, 2018, and July 9, 2018</td>
</tr>
<tr>
<td>2020</td>
<td>October 19, 2020</td>
</tr>
<tr>
<td>2022</td>
<td>June 23, 2022</td>
</tr>
</tbody>
</table>

6. The representation has not submitted further information since these precautionary measures were granted.

7. On September 12, 2019, the Commission forwarded the State’s reports and requested the representation’s comments on those reports. The Commission sent the representation another request for information on June 7, 2019. Subsequently, on April 5, 2022, the Commission requested both parties to submit updated information, and subsequently forwarded the reports

---

submitted by the State to the representation. On March 14, 2023, the IACHR requested observations from the representation regarding the request to lift presented by the State. However, the representation did not respond to date.

A. Information provided by the State

8. The State considered that it had complied with the recommendations of the Commission. In this regard, in 2018, the State stated that the Office of the Attorney General (FGR), through the Life and Physical Integrity Unit (Unidad de Vida e Integridad Física) of the San Miguel Prosecutor’s Office, opened file 037-UDCV-2018-SM for the crime of deprivation of liberty on January 7, 2018. As part of the investigation, functional directions were sent to the Central Investigations Division (División Central de Investigaciones) of the National Civil Police to determine the beneficiary’s whereabouts. In addition, requests for information were sent to the General Directorate of Criminal Centers (Dirección General de Centros Penales) and various assistance centers in order to rule out the possibility that the beneficiary was being assisted in a center. On the other hand, the State indicated that, considering the fact that the beneficiary was a deportee from the United States and that there was a possibility of recurrence of migration: (i) through the Ministry of Foreign Affairs, it requested the collaboration of U.S. immigration authorities in order to verify that the beneficiary is not in custody in that country; (ii) the Salvadoran consular network on the migratory route to the United States was informed of the beneficiary’s general information in order to rule out his possible location in third countries; and (iii) the General Directorate of Migration and Foreigners (Dirección General de Migración y Extranjería) in El Salvador was alerted so that, in the event of confirming the beneficiary’s re-entry through any border point, it be immediately notified.

9. On October 19, 2020, the State expressed that the Office of the Attorney General kept the aforementioned investigation open, as well as the functional directions given to the Central Investigations Division of the National Civil Police of San Miguel. In this regard, it indicated the various steps that had been taken in the investigation: (i) the filing of the complaint; (ii) receiving functional directions from the Prosecutor’s Office (iii) report to interview the victim; (iv) police reports; (v) witness interviews; among others. However, it indicated that these proceedings were not successful in obtaining information on the beneficiary’s whereabouts.

10. On June 23, 2022, the State reported that the investigation into the deprivation of liberty of the beneficiary remained open. It also stated that the Office of the Attorney General had carried out various investigative measures aimed at identifying those responsible for the facts that gave rise to these precautionary measures, as well as to determine the beneficiary’s whereabouts. According to the State, the following steps were taken in the investigation: (i) functional directions sent to the Central Investigations Division of the National Civil Police of San Miguel; (ii) the complainant was summoned in order to gather more information on the events, however, there is no record of the complainant’s appearance at the appointment; (iii) report from the General Directorate of Criminal Centers of the Ministry of Justice and Public Security (Dirección General de Centros Penales del Ministerio de Justicia y Seguridad Pública) stating that the beneficiary has no record of having been entered in the Criminal Record Registry or in the Penitentiary Information System (Sistema de Información Penitenciaria); (iv) request for information from the Ministry of Health, in order to look into the possibility of the beneficiary being treated in a hospital within the country; (v) request for information about the beneficiary to the various telephone companies operating in El Salvador, in order to verify if the beneficiary has any telephone records or has had any telephone number assigned recently; (vi) request for information formulated to the Department of Migratory Movement (Departamento de Movimiento Migratorio) of the General Directorate of Migration and Foreigners; (vii) request for information to the Public Registry of Motor Vehicles. It was reported that no information was found regarding the beneficiary. However, the State affirmed that the developed lines of investigation are pursuant to the framework of the Criminal Prosecution Policy (Política de Persecución Penal) of the Office of the Attorney General and the Protocol of Urgent and Strategic Action for the Search for Missing Persons (Protocolo de Acción Urgente y Estratégica de Búsqueda de Personas Desaparecidas) in El Salvador. For its part, the National Civil Police has carried out several investigative measures. Among these measures, the State highlighted interviewing a beneficiary’s
relative. This family member reportedly stated that Mr. Álvarez Rubio “had links to members of criminal structures”, which is recorded in a police report dated May 12, 2020.

11. On June 23, 2022, the State indicated that it was working towards addressing the problem of missing persons in El Salvador through the implementation of the project called “Institutional strengthening in cases of disappearances related to organized crime to reduce impunity in El Salvador” (Fortalecimiento institucional en casos de desapariciones relacionadas con el crimen organizado para reducir la impunidad en El Salvador). This project includes the Office of the Attorney General and the Supreme Court of Justice, as well as technical support from the United Nations Office on Drugs and Crime (UNODC). This initiative led to the creation of a national framework for the investigation, prosecution and resolution of cases of forced disappearances. This framework consists of three normative instruments: the Protocol of Urgent and Strategic Action for the Search for Missing Persons in El Salvador, the Instructions for the Urgent Search and Investigation of Cases of Missing Persons (Instructivo para la Búsqueda Urgente e Investigación de casos de personas desaparecidas), and the Instructions for Police Action in Cases of Missing Persons (Instructivo para la Acción Policial en caso de personas desaparecidas). In Phase II of this project, programmed to be developed between 2020 to 2023, the State emphasized: (i) increasing the use of tools and protocol in cases of missing persons with organized crime, strategic training, and by strengthening the investigation; (ii) improving the criminal justice response (with a gender perspective), by strengthening the victim response at the reception and service offices; (iii) implementing software for its Single Registry of Missing Persons, which is in the testing phase prior to its implementation. It was also mentioned that significant legislative changes have been introduced in penal matters, such as increased penalties, the classification of criminal conduct and, in general, the adaptation of the procedural framework to inter-American standards in this subject matter. In addition, the National DNA Data Bank Act (Ley del Banco Nacional de Datos de ADN) was adopted. This will reportedly be a database of missing persons and their families. The State alleged that the aforementioned demonstrates State activity that seeks to comprehensively address the cases of disappearances in El Salvador. Consequently, the State requested that the Commission lift these precautionary measures, considering that it conducted a diligent investigation of the facts and has not been able to determine the location of Mr. Álvarez Rubio, which allegedly does not justify keeping these precautionary measures in force.

B. Information provided by the representation

12. The Commission requested information from the representation regarding the implementation of these precautionary measures four times between 2018 and 2023. However, during the time these precautionary measures were in force, the representation did not provide information. The last information submitted by the representation was on March 6, 2018, when filing the request for these precautionary measures.

III. ANALYSIS OF THE REQUIREMENTS OF URGENCY, SERIOUSNESS, 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 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 this Article, the IACHR grants precautionary measures in urgent and serious 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.

14. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that
precautionary and provisional measures have a dual nature, both protective and precautionary.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. 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. 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.

15. 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) establishes that “[t]he 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 if new situations have arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

16. 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 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 lifting of international protection measures.⁷

² 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 Nicole et al. v. Guatemala, Provisional measures, Order of the Inter-American Court of Human Rights of July 6, 2009, considerandum 16. (Only available in Spanish.)


⁵ I/A Court H.R. Matter of Fernández Ortega et al., Provisional measures regarding Mexico, Order of February 7, 2017, considerandums 16 and 17 (Only available in Spanish).

⁶ Ibid.

⁷ Ibid.
17. The Commission notes that the State requested that these precautionary measures be lifted on June 23, 2022. It is therefore appropriate to analyze the threatening situation in light of which these precautionary measures were granted on May 3, 2018, and verify if the factors that put the proposed beneficiary at risk persist. The Commission observes that the representation has not submitted information in this proceeding since the request for precautionary measures on May 3, 2018. Almost five years have elapsed without any further information on their part, despite the repeated requests for information by the IACHR. In this regard, the Commission observes that it has sought to contact the representation through the contact information provided, and also attempted to obtain updated contact information, but has received no response in over five years. The foregoing is especially relevant considering that the State has requested to review whether these precautionary measures should remain in force by filing a request to have the measures lifted under the terms of Article 25 of the Rules of Procedure.

18. 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. By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why. In that sense, Article 25(11) of the Rules of Procedure 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.

19. The Commission recalls that the precautionary measures were granted in 2018 in light of the available information, which indicated that the beneficiary was missing. After the granting the precautionary measures, the Commission notes that the State sent reports in which it referred to the actions taken in the framework of the investigation by the Office of the Attorney General into the disappearance of Óscar Álvarez Rubio. In this regard, it was reported that the corresponding authorities have taken diligent action in the investigation, including: functional directions were given to the Central Investigations Division of the National Civil Police; the complainant was summoned; witnesses were interviewed; a report from the General Directorate of Criminal Centers of the Ministry of Justice and Public Security regarding possible records of the beneficiary was issued; a report from the Ministry of Health regarding possible records of the beneficiary was issued; information on the beneficiary was requested to the Public Registry of Motor Vehicles; and information on the beneficiary was requested to the Department of Migratory Movement of the General Directorate of Migration and Foreigners. In addition, taking into account that the beneficiary was returned from the United States prior to his disappearance, and given the possibility of migratory recurrence, the collaboration of U.S. immigration authorities was requested. This was done in order to verify his possible location and allow any information on the beneficiary to be forwarded to the Salvadoran consular network in order to rule out his possible location in third countries. Despite these measures, it has not yet been possible to identify the whereabouts or fate of the beneficiary.

20. Thus, the IACHR understands that, despite the actions carried out in the investigation component and the actions taken over time regarding the beneficiary’s situation, the State continues to investigate the facts referring to the beneficiary’s disappearance in 2018. In these circumstances, in understanding the nature of the mechanism of precautionary measures in situations such as this one, the Commission recalls the statements issued by the Inter-American Court in the provisional measures of the Matter of Almonte Herrera regarding the Dominican Republic in 2010. This matter concerns, inter alia, the disappearance of Mr. Herrera. In deciding to lift these
precautionary measures in 2015, the Inter-American Court stated the following:

"14. However, the passage of time in this matter and the lack of progress in the investigations directly affect the practical effects of these provisional measures, whose basic purpose was to avoid irreparable damage to the life and integrity of Mr. Almonte Herrera by the prompt action of the national authorities to discover his whereabouts. Even though these measures have been in force for three years and nine months, the Court still has no information on specific progress or results that would allow it to determine clearly what happened to Mr. Almonte Herrera or his whereabouts, so that the protection that it was hoped they would provide has been ineffective." (...)

21. The Commission observes that the Inter-American Court at that time stated the following:

"Consequently, owing to the particular circumstances of this matter, and taking into account that provisional measures are exceptional in nature and relate to a specific temporary situation so that, given their characteristics they cannot be perpetuated indefinitely, the Court must order that they be lifted and that the possible violations of the American Convention derived from what happened to Mr. Almonte Herrera be examined by means of a contentious case, if the necessary presumptions exist, and not in the context of the provisional measures." 11

22. In line with what the Inter-American Court indicated, which was also adopted by the IACHR in the resolution to lift the precautionary measures in the matter of Luis Alberto Sabando Veliz regarding Ecuador (PM-1002-04) of January 4, 2021, the Commission states that in this matter, the precautionary measures sought that the competent authorities of El Salvador adopt “expeditious action” to discover the whereabouts of the person and avoid irreparable damage. In this same way, the Commission understands that these precautionary measures, like provisional measures, cannot be extended indefinitely in time given their temporary nature, without prejudice to assessing the actions taken by the State in the investigation process.

23. However, following the indications of the Inter-American Court in the matter of Almonte Herrera regarding the Dominican Republic, the Commission understands that, through a petition, there is an opportunity to analyze the possible violations of the Convention that may have occurred in this matter, provided that the corresponding procedural requirements are met. This is insofar as it must carry out a merits analysis of the various actions performed by the State of El Salvador in the framework of the investigations in light of the corresponding standards.

24. In view of the foregoing considerations, and taking into account that the elapsed time requires a merits analysis in the framework of a possible petition, and not in this precautionary measures mechanism, the IACHR decides to lift these precautionary measures. The Commission also notes that the representation did not submit any information after 2018. Therefore, the Commission does not have additional assessment elements in the terms of Article 25 of the Rules of Procedure. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures, 12 the Commission deems it appropriate to lift these precautionary measures. It also recalls the obligation the State of El Salvador to comply with the corresponding investigations and to act with due diligence in accordance with the terms of the American Convention and applicable international standards.

IV. DECISION

25. The Commission decides to lift the precautionary measures granted in favor of Óscar Álvarez Rubio in El Salvador.

---

10 I/A Court H.R. Matter of Juan Almonte Herrera et al. regarding the Dominican Republic, Provisional Measures. Order of the Inter-American Court of Human Rights of November 13, 2015, considerandum 14. (Only available in Spanish)
11 Ibidem.
26. 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.

27. The Commission instructs the Executive Secretariat to notify this Resolution to the State of El Salvador and to the representation.

28. Approved on May 29, 2023, by Margarett Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Joel Hernández García; Julissa Mantilla Falcón; and Carlos Bernal Pulido, members of the IACHR.

Jorge Meza Flores
Assistant Executive Secretary