
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 35/2023**

Precautionary Measure No. 160-23
C.P.R. and J.P.R. regarding Argentina
June 21, 2023
Original: Spanish

I. INTRODUCTION

1. On February 28, 2023, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures in favor of children C.P.R. and J.P.R. (“the proposed beneficiaries”) filed by Eduardo Porretti (“the applicant”), urging the IACHR to require the State of Argentina (“the State”) to adopt the necessary measures to protect their right to family life. According to the request, Mr. Eduardo Porretti is the father of the children, C.P.R. of 14 years of age and J.P.R. of 12 years, and has not been able to have contact with his daughters since 2017, when a restraining order was granted for having been criminally accused for the crime of sexual abuse. Despite having been acquitted in 2018, and repeated requests before the civil judge to reunite the applicant with his daughters, the family allegedly has yet to be reunited.

2. According to Article 25 of its Rules of Procedure, the Commission requested information on March 10, 2023. The State requested an extension on March 27, 2023. Upon being granted the extension, the State submitted its report on April 5, 2023. The applicant submitted additional information on June 8, 2023.

3. After analyzing the submissions of fact and law presented by the parties, the Commission considered that the information provided showed *prima facie* that the children C.P.R. and J.P.R. are in a serious and urgent situation that may imply irreparable damage to the protection of the family, integrity and identity of the proposed beneficiaries. Thereby, the Commission requests that Argentina adopt the necessary measures to safeguard the rights of the children C.P.R. and J.P.R. In particular, the State must immediately carry out through the competent authorities, and the relevant specialists, an assessment of the children’s current circumstances, and an evaluation of the precautionary and provisional measure issued in October 2017 by the National Civil Court of First Instance No. 87 which determines the lack of contact between the children and their biological father, taking into account current circumstances and their best interests, in accordance with international standards in the matter.

II. SUMMARY OF FACTS AND ARGUMENTS

1. Information alleged by the applicant

4. The applicant Eduardo Porretti married R.P.A.R. in 2008. That same year, the family moved to the United States. On November 23, 2008, C.P.R. was born. On December 18, 2011, her sister J.P.R. was born. Both have an older brother, son of Mr. Porretti. Through the precautionary measure mechanism, the applicant requests that the children be guaranteed reunification with their father and brother.¹

¹ In particular, he requests that: a) the restraining order related to C.P.R. and J.P.R. be revoked; b) interviews be conducted for the purpose of reuniting both him and his son with the proposed beneficiaries, supervised by professionals who determine the progression necessary to achieve full respect for the right to communication; c) provisions of domestic law be adopted to guarantee the process of reuniting the children with their father and brother, as well as the application of an effective mechanism for the children to gradually reunite with their father.

5. In 2012, Mrs. R.P.A.R. and her daughters began living in Buenos Aires, Argentina. From then on, Mr. Porretti began to travel to the country to see his family, while they occasionally visited him. In February 2012, Mrs. R.P.A.R. asked the pediatrician in Argentina for a referral to psychopathology to rule out the possibility of abuse of the child, C.P.R. It was alleged that, in 2011, when C.P.R. first started kindergarten in the United States, the child had come out crying and had touched her genitals for a few hours. Consequently, a therapy session was held, where abuse was ruled out. Subsequently, in June 2012, the pediatrician left a new note in C.P.R.'s medical history, where Mrs. R.P.A.R. suggested that the child had been a victim of abuse by her parent. However, no genital lesions were allegedly found.

6. In 2014, the parents of the proposed beneficiaries separated by mutual agreement. In May 2015, they finalized their divorce consensually and signed a "regulatory agreement" in force until their daughters attain age of majority. Thereupon, the children began a weekly routine of three to four days with the applicant. At the end of 2015, Mr. Porretti moved to Caracas, Venezuela for work-related reasons. During this same period, the children traveled to visit the applicant, accompanied by their brother or acquaintances of the parents, while the applicant traveled to Argentina to see his daughters.

7. In 2017, after returning to Argentina, the children reportedly told their mother about their father's new partner. According to the applicant, this news reportedly triggered a violent reaction from the mother, who decided that the children would no longer travel abroad to visit their father. On October 27, 2017, when the applicant went to pick up his daughters at school, the principal informed him that he could not withdraw them because there was a "restraining order" as a result of a complaint against him. The complaint had been filed with the Office of Domestic Violence (OVD) on October 24, 2017, by Mrs. R.P.A.R., who accused him of violence, abuse, and attempted poisoning of his daughters, in addition to having planned to escape abroad with the children. Following this complaint, two cases were opened, one in civil jurisdiction and the other in criminal jurisdiction.

8. The criminal proceeding investigated what Mrs. R.P.A.R. reported. It was indicated that the child, C.P.R., had claimed to be a victim of inappropriate behavior by Mr. Porretti, such as kissing her on the body, chest, and genitals, sleeping with her while hugging her in a way that made it difficult for her to breathe, making comments of a sexual nature, or entering the bathroom and watching her while she bathed. Regarding J.P.R., she only mentioned that she received mistreatment from her father, expressing discomfort over this issue.

9. On April 25, 2018, the National Criminal and Correctional Court No. 48 decided to dismiss Mr. Porretti for the crime of sexual abuse against C.P.R. and J.P.R. The Court held that Mrs. R.P.A.R.'s complaint did not find support in other means of evidence. Additionally, the results of the examinations, carried out by the Forensic Medical Corps, determined that the children did not show objective grounds to continue with the case. The psychological study done on the children concluded that they did not show indicators that would allow them to diagnose a pathological increase in imagination, nor specific elements that would account for the influence of third parties, although it was not possible to rule out that they were over-involved in family conflicts. According to Mr. Porretti, the judgment has been final since May 2018.

10. Regarding the case in civil court, Mr. Porretti stated that, after the dismissal in criminal matters, he immediately requested the lifting of the restraining order issued by the National Civil Court of First Instance No. 87. However, this request was denied by the Court. In regard to the matter, the applicant maintains that the judicial authority has maintained a restraining order despite having been dismissed from the acts that caused it. Furthermore, he points out that this impediment to contact the children harms their rights, and that of their brother and father.

11. On September 10, 2020, the applicant received two emails from the school, identifying C.P.R. as "C.R.". The applicant states that this removal of the paternal surname is present in all school

documentation. He also indicates that in a psychological report, his eldest daughter had presented herself as “C.R.”. In addition, she omitted her father on the “family test.” Considering that C.P.R. had turned nine years old, as well as the ease with which she omitted her paternal surname, the applicant infers that his daughter had learned that this was her identity. Regarding J.P.R., it is inferred that she may have enrolled in preschool with her paternal surname removed.

12. On December 2, 2020, Mr. Porretti filed a brief requesting urgent reunification with his daughters. This presentation allegedly occurred following C.P.R. and J.P.R.’s non-appearance at a hearing scheduled for that day, which was to hear the children after Mrs. R.P.A.R. decided to remove their paternal surname from school documentation.

13. On June 29, 2021, Social Services responded to a request for reports ordered by the National Civil Court of First Instance No. 87, where it reported the different courses of action they had suggested according to the ordered measures: joint interviews with professionals of Psychology Services of the National Civil Court of Appeals, and inter-institutional meetings with the therapists of the parties and their daughters; and an inter-institutional meeting with professionals of the technical team of the Comprehensive Specialized Center for Children and Adolescence, who carried out the evaluations of the children and stated that the evaluation process was completed, suggesting that they continue their treatments in the individual spaces. Additionally, the report indicated that the possibility of reunification was subject to individual treatment of the children, but that the conditions for this were not yet met. The report noted that taking into account the time that has elapsed, and the lack of progress in individual treatments, it was suggested to update the evaluation of the parties and the children with a new team from the Asociación Civil Igualdad de Derechos (ACID), in order to know if it was possible to make progress in the reunification. The Court ordered the update on July 1, 2021.

14. ACID presented a report on the development of the interviews it held with the family group, noting that on November 10, 2022, a virtual meeting was held with Mr. Porretti. The entity also held a virtual meeting with Mrs. R.P.A.R., who maintained that her two daughters had not contacted their father since five years ago and that neither of them wanted to see him. Furthermore, she mentioned the restraining order, evaluations, and the interviews the children were summoned and forced to carry out and provided details on the schooling of both. Finally, she mentioned that they did not attend psychotherapeutic treatment.

15. On that occasion, Mrs. R.P.A.R. was informed that her daughters were to be summoned to ACID headquarters to comply with the judicial decision. On November 10, 2022, the children were summoned for an interview on November 24, 2022. On December 1, 2022, Mrs. R.P.A.R. was sent a new notice regarding an interview on December 15, 2022. The children did not attend any of the interviews. Consequently, ACID reported that it was unable to continue with the mandated reunification process.

16. On December 19, 2022, the Court ordered the mother to coordinate with this institution a new date for the children to attend the interviews, under warning of ordering the record to be referred to criminal court for the investigation of the alleged crime of contempt. On February 2, 2023, given the silence of Mrs. R.P.A.R., the court ordered the referral to criminal court. In this regard, Mr. Porretti stated that, in the face of Mrs. R.P.A.R.’s acts of rebellion, the Civil Court has chosen to delay the resolution of the case instead of ordering the reunification with his daughters and that this unjustified prolongation puts at risk the development, identity, and bond with his daughters.

17. On June 8, 2023, the requesting party reported, in accordance with the order of the National Civil Court of First Instance No. 87, on April 13, 2023, Mr. Porretti was interviewed by psychologists in where he was informed about the result of the interviews conducted with the proposed beneficiaries on March 9 and 23 of 2023. One of the professionals reportedly told Mr. Porretti that she did not see the possibility in recovering his children for many years and that to avoid

more suffering to his children and the applicant, she recommended writing a farewell letter and abandoning the claim for reunification. The applicant indicated that he considers accepting the suggestion to drop his request for reunification may lead to infer that his daughters are guilty of situations in which they are victims as a result of the struggle within adversarial processes of the adults who must protect them.

18. It was noted that the ACID report indicated that the P.R. sisters stated that they were not attending any psychotherapeutic treatment. Regarding J.P.R., the report pointed out that they had been able to perceive expressions of anguish of such magnitude that it seems that the events described had occurred close to the present. According to the ACID report, this constitutes an alert signal about her current emotional state given that at the time of the interviews she was not attending psychotherapeutic treatment. ACID indicated that, although the child has already gone through certain psychotherapeutic approaches, “she may not have been able to verbalize issues that concern her or generate fear and that potentially are not specifically related to the reported event.” As for C.P.R., it was reported that she was explicit in her refusal to reunite with her father, additionally expressing, “I do not want to come here anymore,” “neither here nor anywhere else.” In the second interview with ACID, the sisters seemingly reiterated what was said in the first interview. In addition, the ACID report states that:

“Taking into account what C. and J.P.R. mentioned, adding to the continuity of the long-standing adult conflict and that both sisters do not currently attend therapeutic treatment (despite what was requested of the parent), this team considers that at this time the conditions are not present to initiate a parent-child reunification.”

2. Response from the State

19. The State reported that, according to the request submitted by Mr. Porretti, his daughters C.P.R. (14 years old) and J.P.R. (12 years old) have their hub of life in the Autonomous City of Buenos Aires. They are in the care of their mother R.P.A.R. The father has his home in the same town, although he is often abroad for his diplomatic work. The State noted that the mother of the proposed beneficiaries filed a complaint with the Office of Domestic Violence on October 24, 2017, for alleged sexual abuse and mistreatment of the children by the father. For this reason, the complaint was forwarded to both the civil and criminal courts.

20. Among the case for family violence, the National Civil Court of First Instance No. 87² decreed the following on October 26, 2017:

"In view of the evidence on record, what results from the interdisciplinary report and what was stated by the child advocate in a previous opinion, is the prohibition and approach of the parent, Eduardo Porretti, in a radius of no less than ONE HUNDRED meters from any place where C.P.R. and J.P.R. are located, the measure will remain in effect until the evaluations conducted on the children within criminal jurisdiction are included in the proceedings."³

21. Additionally, it was also requested that they notify the National Criminal and Correctional Court No. 48 that a copy of the practical evaluations conducted on the children should be submitted in a timely manner. On November 21, 2017, Mr. Porretti requested the National Civil Court of First Instance No. 87 the following: the modification of the precautionary measure; to establish a supervised visitation arrangement, with the submission of reports after each of the visits; and to establish authorization to maintain contact with his daughters through e-mails and text messages and

² The Court recorded the existence of two other proceedings, one for provisional alimony and the other for divorce. Both proceedings were processed by the National Civil Court of First Instance No. 87.

³ The Court considered an interdisciplinary report of the Care Unit of the Office of Domestic Violence dated October 24, 2017, and the response of the Public Defender of Minors and Unfit Persons No. 3 dated October 25, 2017.

for authorization to continue maintaining contact by telephone and e-mail with the children's schoolteachers and school authorities. Moreover, Mr. Porretti signaled that the complaint was false, but that understanding the need for the protection of the children while the tests or studies were carried out to know if the mother's statements were true, he requested that the measure be changed to a supervised visitation arrangement that would demonstrate what the reality was of the relationship with his daughters, since the restraining order against him could aggravate the situation of uncertainty and anguish in which the children were already. The father added that, due to his profession, and that he resided abroad, the interaction with his daughters involved interaction that was not typical, rather it was spaced out and subject to his possibilities of traveling into the country or that of the children to visit their father's destination abroad. Therefore, he indicated that, if the restraining order was added, there would be long period of time without personal contact between them, attaining psychological damage and moral suffering.

22. Regarding the criminal proceedings, the State indicated that the Office against Domestic Violence referred what was reported by Mrs. R.P.A.R. to criminal jurisdiction. On October 24, 2017, the case was opened in order to investigate the possible commission of sexual abuse by Eduardo Porretti against his daughters. On April 25, 2018, the National Criminal and Correctional Court No. 48 determined the dismissal of Mr. Porretti at the request of the intervening Prosecutor's Office. The judicial authority stressed that after analyzing the evidence collected "it is not possible to hold Porretti criminally liable for the acts that are being attributed to him, even with the degree of probability that this stage of the process is in." Likewise, the judge considered that Mrs. R.P.A.R.'s accusation against her ex-partner was not supported by another evidentiary measure, "looking at her statements as isolated." In this regard, the Judge highlighted, among others, that: the events had taken place in a context of family conflict; the purpose of the definitive separation of Mr. Porretti, the result of the medical examinations carried out by specialists of the Forensic Medical Corps showed that the children did not show objective grounds to continue with the criminal case; there was no evidence in the case that would allow the complaint to be substantiated; and that the health professionals who studied the situation of the children (before, during and after the complaint was made) did not show signs of acts of sexual abuse.

23. On May 29, 2018, the representation of Mr. Porretti referred to the National Civil Court of First Instance No. 87 copy of the decision of dismissal in criminal court and requested that "the restraining order preemptively ordered" be lifted and that the relevant measures be provided for the reestablishment of the bond between the father and children. On June 26, 2018, the National Criminal and Correctional Court No. 48 informed the National Civil Court of First Instance No. 87 on the decision to dismiss the case in favor of Mr. Porretti and that the decision was final. On August 3, 2018, the representation of Mr. Porretti reiterated to the Civil Court that the restraining order be lifted, and the visitation arrangement restored. On August 10, 2018, the mother of the children filed a brief requesting that the restraining order on all types of father-child contact be maintained.

24. On September 10, 2018, the National Civil Court of First Instance No. 87 asked the mother to report on the continuity of the treatments suggested in the evaluation at the criminal court. Mrs. R.P.A.R. was also summoned to hold an interview with the Court's Social Services. On September 26, 2018, Ms. R.P.A.R. informed the Court that J.P.R. was continuing therapeutic treatment, while C.P.R. had discontinued treatment in June 2018.

25. On September 27, 2018, Mr. Porretti's representation requested to be reunified through a private institution. On October 31, 2018, the National Civil Court of First Instance No. 87 appointed a special guardian for the proposed child beneficiaries and denied the request for intervention from the Family Violence Unit of Pedro de Elizalde Hospital for the evaluation of the children. Regarding the lifting of the restraining order and the reunification with the father, the Court indicated that the report should be obtained regarding the evolution of the children's psychological

treatment. The psychologists treating the children submitted reports on February 21, 2019, regarding J.P.R.⁴ and on February 20, 2019, regarding C.P.R.⁵

26. On March 19, 2019, the representation again requested the reunification of Mr. Porretti with his daughters with the intervention of an interdisciplinary group of professionals. The special guardian issued a report in which she stated that: C.P.R.'s will to not attend psychological therapy be taken into account; if the judge deemed it necessary, a psychopedagogical report would be requested from the school; and the will of the children to not be forced to reunite with their father be respected. On April 12, 2019, Mr. Porretti's representation informed the National Civil Court of First Instance No. 87 that he would travel to Argentina from April 24 to May 3, 2019, for which he requested that the possibility of initiating the reunification be considered, adopting the measures considered pertinent such as the presence of a social worker or the therapeutic support of professionals.

27. On September 17, 2020, Mr. Porretti's representation informed the National Civil Court of First Instance No. 87 that the school where his daughter C.P.R. was studying identified her with her mother's surname, having removed her father's surname at Mrs. R.P.A.R.'s request, which in his opinion, not only violated the child's right to identity, but also affected her emotional and mental health. The Court ordered to listen to the children regarding the alleged removal of their paternal surname by their mother and to count on the collaboration of the school in which they studied. On December 2, 2020, the father of the children reported that Mrs. R.P.A.R. had not appeared at the scheduled hearing where it was planned to hear the children regarding their identity and use of their paternal surname. At that time, the father explained that since September 12, 2017, he has had no contact with his daughters resulting from the criminal accusation from which he was dismissed.⁶

28. On April 19, 2021, the National Civil Court of First Instance No. 87 asked the director of the school where the children were studying to report the name and surname with which they were register, and with which surname they were individualized among teachers and peers in general. In response, it was indicated that they were registered according to the identification documents provided at the time of their enrollment into the institution.⁷ Mr. Porretti again requested in August and December of 2020 that the immediate father-child reunification be ordered. Likewise, Mr. Porretti presented a family incident against Mrs. R.P.A.R. requesting an innovative precautionary measure that would entail the restoration of the paternal surname.

29. On June 29, 2021, the Social Worker of the National Civil Court of First Instance No. 87 presented a report disclosing that joint interviews had been carried out between the Psychology Services of the Chamber, and inter-institutional meetings had been held with the parties' therapists and their daughters. In this regard, it was mentioned that the professionals of the CIENA Technical Team had carried out and finalized the evaluation of both children, suggesting that they continue their treatments in individual spaces. On July 1, 2012, the National Civil Court of First Instance No. 87 decided, as a precautionary measure, to update the evaluations of "the parties and their daughters," with a new team of ACID professionals "in order to know if the conditions are met for father-child reunification."

30. Additionally, the Court argued that "communication with children is not only a right of parents, but also a right of the children and, therefore, a correlative duty of the parents. Any arrangement of communication must be established in a way that takes into account both the interests of the parents and that of the child, and thus preserves the appropriate relationship between them.

⁴ The report indicated that, to date, the child J.P. would not consider maintaining contact with her father.

⁵ The report noted that she had attended sessions from October 23, 2017, to June 11, 2018, after which time she interrupted treatment for unknown reasons.

⁶ On August 25, 2020, and September 7, 2021, Mr. Porretti informed the civil judge that he had last seen his daughters on September 12, 2017.

⁷ Mr. Porretti requested that the dispute over restoring the paternal surname not be dealt with in the same family violence file.

Therefore, it should not be understood for the greater comfort of the parents, and visits should not become an occasion to revive disagreements. They should be carried out in a way that guarantees personal interaction with the parents and their child, without causing situations that are detrimental to fulfilling its purpose.” Lastly, the Court indicated that “applying the approach of the child’s best interest in the decision-making process, evaluates the safety and integrity of the child” and “the decision that is dictated [...] must take into account the best interests of these people.”

31. The guardian of the proposed beneficiaries appealed the decision, claiming that it could re-victimize them, and that it was unnecessary taking into account the will expressed by the children. In contrast, the Public Defender of Minors and Unfit Persons (*Defensor Público de Menores e incapaces*) stated that they considered it relevant and reaffirmed the need for a new evaluation. In this regard, they stressed that, if not, it could deny the children the possibility of trying to reunite with their parent and further lose the bond they could form. The decision was confirmed by the L Chamber of the National Civil Court of Appeals on August 12, 2022, highlighting that the objective is “to exhaust all means aimed at guaranteeing the right of the children and try to solidify the possibility that they may have adequate contact with both parents.”

32. ACID reported that the family group was allegedly summoned to begin the family reunification process. For this purpose, virtual interviews were conducted with the parents separately.⁸ The mother of the children, C.P.R. and J.P.R., was informed that they were summoned to person-to-person interviews on November 24 and December 15, 2022. The children did not appear on the mentioned dates and there was no communication regarding their absence. Faced with this situation, ACID informed the Court that “in the face of the daughters’ repeated failures to appear,” the professional team was unable to continue with the ordered reunification process.

33. Taking into account the information provided by ACID, Mrs. R.P.A.R. was requested, by means of an order dated December 19, 2022, to coordinate with the institution a new date for the girls to appear for the interviews under warning of ordering the record to be referred to criminal court to investigate the alleged crime of contempt. On February 2, 2023, the National Civil Court of First Instance No. 87 resolved to implement the warning given to the mother of the girls, because Mrs. R.P.A.R. neither established the coordination of a new date for her daughters to attend interviews nor presented impediments for them to appear at the interviews. The National Criminal and Correctional Court of Appeals of the Federal Capital was appointed to investigate the possible commission of the crime of contempt.

34. ACID informed the National Civil Court of First Instance No. 87 that the children’s mother had communicated on February 3, 2023, to request a new interview date for her daughters. She was assigned the date of February 16, 2023, but the mother noted that she would not be in Buenos Aires on that date and requested that she be cited after March 6, 2023. ACID set new dates for March 9 and 23, 2023. On March 2, 2023, Mrs. R.R. informed the Court that, given what the Association reported, her daughters would appear for interviews on those days. On March 2, 2023, the Civil Judge issued a resolution instructing Mrs. R.P.A.R. to find the necessary means for her daughters to attend on the new proposed dates under warning of considering an eventual breach as an attitude of obstructing justice.

35. The Legal Affairs Delegation of the National Secretariat for Children stressed that the judiciary is the competent body to resolve the question at issue, and for that reason it ordered that the mother’s failures to appear when summoned be investigated, taking into account that they might constitute the crime of contempt. It added that the judiciary is deploying a series of measures aimed

⁸ A virtual interview of the father was conducted on November 10, 2022. The children’s mother was interviewed the same day, and she indicated, referring to Mr. Porretti, that: “the girls do not want to see him,” “neither of the two,” and that her daughters currently did not attend therapy.

at promoting the reunification process. The foregoing prevents interference by the specialized body of the National Executive Branch.

36. The State reported that professional intervention is in force and in the interviewing stage, so the intervening judicial body is deploying a series of measures aimed at promoting the reunification process between Mr. Porretti and his daughters. Finally, the State indicated that the possibility of interdisciplinary work between an impartial third party and the entire family group is fundamental since its guiding principle is the best interests of the children, ensuring their proper and harmonious development, finding the first space for socialization in the emotional bond with their parents. Likewise, it stressed that it is essential to provide appropriate care and protection to children, looking to reestablish father-child contact. Regarding the children's participation within the process and them being heard, the State pointed out that it is an essential element and a right that parents must respect and that the State must guarantee, in order to ensure that the children's perspectives and experiences are taken into account when making decisions on matters that affect them.

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM

37. The mechanism of precautionary measures is part of the Commission's function of overseeing Member States 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 Statute of the IACHR. 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 to persons.

38. 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, both protective and precautionary.⁹ Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.¹⁰ 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.¹¹ Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under consideration by the IACHR. They aim to safeguard the rights possibly 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

⁹ 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.

¹⁰ 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].

¹¹ 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].

and, if necessary, to implement the ordered reparations.¹² 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.

39. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided should be assessed from a *prima facie* standard of review to determine whether a serious and urgent situation exists.¹³

40. In this procedure, the Commission clarifies that it is not for it to analyze whether the processes pursued in the Argentine domestic sphere are in line with the American Convention, or in accordance with the special obligations for the protection of children. This is with the understanding that such analyses require merits determinations that would be typical of the petitions and cases system. Therefore, the following analysis carried out by the Commission is exclusively related to the requirements of seriousness, urgency, and risk of irreparable harm set forth in Article 25 of its Rules of Procedure, which can be resolved without addressing merits determinations.

41. The Commission recalls that the bodies of the inter-American system have recognized that, regarding 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 delays or lack of responses in guardianship and custody cases can result in irreparable harm to children’s rights to family, identity, and psychological integrity.¹⁵ The Inter-American Court has recognized that in cases involving their rights, domestic authorities have the duty, *motu proprio*, to “accelerate” the proceedings and that questions of guardianship and the establishment of a visitation system “[...] are part of processes that are not especially complex and that are not unusual for States.”¹⁶

¹² 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.

¹³ In this regard, for instance, referring to provisional measures, the Inter-American Court has indicated that this standard requires a minimum degree of detail and information to assess, *prima facie*, a situation of risk and urgency. I/A Court H.R., *Matter of children and adolescents deprived of liberty in the “Complejo do Tatuapé” of FEBEM*. 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 at: https://www.corteidh.or.cr/docs/medidas/febem_se_03_ing.doc

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., considerandum 16.

¹⁵ I/A Court H.R. Matter of L.M. regarding Paraguay. Provisional Measures. Order of the Inter-American Court of Human Rights of July 1, 2011, paras. 12, 15-16, 19; IACHR, Child A.R. regarding Argentina (PM 356-16), Resolution 26/2017, July 27, 2017, para. 24 [only available in Spanish]; IACHR, Matter of Maria and her son Mariano regarding Argentina (PM 540-15), Resolution 22/2016, April 12, 2016, paras. 2 and 11; IACHR, The Right of Girls and Boys 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. regarding Argentina (PM 356-16), Resolution 26/2017, July 27, 2017, para. 24; 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.

42. The Commission has also acknowledged that the passage of time inevitably constitutes a defining element when assessing the possible existence of a risk, taking into account the protection needs in each case depending on the specific circumstances. The foregoing in application of the right of children under Article 19 of the American Convention, to be provided by their family, society and the State with the protection measures that their condition requires. In this sense, the right to the protection of families under Article 17 of the American Convention “[...] entails, among other obligations, favoring, in the broadest way, the development and strength of the family unit.”¹⁷ Likewise, in the light of Article 8 of the Convention on the Rights of the Child, the Inter-American Court has pointed out the importance of this right in relation to that of identity in the case of children,¹⁸ highlighting the role that biological families plays in this process.¹⁹ In this sense, the prolonged separation of children from their family environment is likely to seriously affect their emotional bonds with relatives,²⁰ causing an emotional and psychological impact that can affect their personal integrity to the extent that it can jeopardize the harmonious development of their personality.²¹ Similarly, the inter-American system has recognized that, with regard to children and adolescents, the right to identity is related to the right to family life, in view of the role that the family plays in the set of attributes and characteristics that allow for a person's individualization in society.²² In addition, the specific circumstances and context in which a child is separated from his or her parents produce differentiated impacts both on his or her personal integrity and on his or her holistic and harmonious development, processes in which the child's personal factors also play a role, including his or her age and development level.

43. Considering the above, the Commission proceeds to analyze compliance with procedural requirements.

44. As for the requirement of seriousness, the Commission considers that it has been met. The Commission notes that, following an October 2017 complaint of sexual abuse and mistreatment against the proposed beneficiaries, the National Civil Court of First Instance No. 87 decided, on October 26, 2017, to decree “as a precaution” and “provisionally” a restraining order (*medida de prohibición de acercamiento*) against Mr. Porretti. The Court indicated that this measure was established “until the evaluations carried out on the [proposed beneficiaries] in criminal court are on file.” According to the available information, the parties do not contest that Mr. Porretti has not had contact with his two daughters subsequent to the aforementioned decision of the National Civil Court of First Instance No. 87. Since then, the Commission notes that approximately 6 years have passed without a relationship between the father and the children C.P.R. and J.P.R.

45. In relation to the above, the Commission recalls that certain cases, such as violence, negligence, or exploitation that take place within the family, demand State interference through

¹⁷ I/A Court H.R., *Case of Fornerón*, para. 116.

¹⁸ 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: https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf

¹⁹ I/A Court H.R., *Case of Gelman*, para. 124.

²⁰ IACHR, Request for Provisional Measures to the Inter-American Court of Human Rights regarding the child L.M., May 18, 2011, para.54. In this sense, the Commission has understood “that age and the passage of time are crucial to the development of emotional bonds, family ties, personality and also shaping the identity of the child, especially in the early years, and, therefore, there is a duty of exceptional diligence since the time factor may cause irreparable damage to the child.” IACHR, *The Right of Girls and Boys to a Family. Alternative care. Ending institutionalization in the Americas*. October 17, 2013, para. 316.

²¹ 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., considerandums 14 and 18.

²² 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 a person's individualization in society and, in this sense, includes several other rights contained in the Convention, depending on the person holding rights in question and the circumstances of the case. Inter-American Juridical Committee, Opinion “on the scope of the right to identity,” CJI resolution/doc. 276/07 rev. 1 of August 10, 2007, paragraph 12, ratified by resolution CJI/RES.137 (LXXIO/07) of August 10, 2010. The Inter-American Court of Human Rights and the Commission have also established its relationship with the right to family life. 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., considerandum 15.

protective measures, which may include temporary or permanent separation of children and their parents.²³ States have an immediate obligation to take “[...] all measures of any kind that are effective and appropriate for the purpose of preventing and responding to violence against children,”²⁴ provided that they are duly justified by the principle of their best interests.²⁵ At the same time, the Commission recalls that any assessment of the best interests of the child must take into account his or her current circumstances.²⁶ Measures that impact the right to the family, “[...] must respect the principles of necessity, exceptionality, and temporariness,”²⁷ and have the aim of preserving and restoring the rights of the child, including the right to family.²⁸ As a corollary the State’s duty to periodically review the implemented measures derives from these principles.²⁹

46. Considering the above in light of information available in the file, the Commission identifies that, on April 25, 2018, the National Criminal and Correctional Court No. 48 decided to dismiss the case. The Commission notes that the Court assessed the complaint filed and the medical examinations carried out by the Forensic Medical Corps on the girls, as well as what the health professionals who studied their situation before, during, and after the sexual abuse complaint had indicated. In this sense, the Commission understands that the competent judicial entity did not identify elements to continue with the complaint against Mr. Porretti and, therefore, no criminal responsibility was determined. It is also noted that the decision has been final since May 2018.

47. Following the decision to dismiss, the Commission notes that Mr. Porretti has been requesting the National Civil Court of First Instance No. 87 to lift the restraining order and begin the reunification process with his daughters. However, the order has remained in force over time, without identifying assessment elements that indicate that the decision has been reevaluated in 2018, or in subsequent years, in light of the children’s circumstances. The Commission notes that, following the 2018 dismissal decision, approximately 5 years have elapsed without the decision of the National Civil Court of First Instance No. 87 being reviewed, especially considering that the criminal proceedings initiated in 2017 no longer continue.

48. The Commission understands that the situation of the two proposed beneficiaries has been monitored by the competent Court, mainly through the evaluation of psychological reports. More recently, in July 2021, the Court reportedly ordered the children to be evaluated by a new ACID team

²³ IACHR, *The Right of Girls and Boys to a Family*, 2013, paras. 122, 179. See also: I/A Court H.R., *Case of Atala Riffo and Daughters v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239*, para. 164.

²⁴ IACHR, *The Right of Girls and Boys to a 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, Matter of L.M.*, paras. 14 and 16.

²⁵ 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-17/2002 of August 28, 2002. Series A, No. 17*, para. 73; IACHR, *The Right of Girls and Boys to a Family*, 2013, para. 149.

²⁶ See: IACHR, *Child A.R. regarding Argentina (PM 356-16)*, Resolution 26/2017, July 27, 2017; I/A Court H.R. *Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/2002 of August 28, 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 abstract, but rather it must be objectively justified. See: IACHR, *The Right of Girls and Boys to a Family*, 2013, para. 157.

²⁷ IACHR, *The Right of Girls and Boys to a 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.

²⁸ 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 Girls and Boys to a Family*, 2013, para. 172.

²⁹ “The purpose of the periodic review of the temporary protection measure is to determine whether the measure achieves its objective during the period of time in which it is in force, and, therefore, whether it serves the best interests of the child. In addition, periodic supervision should help guide the implementation of the measure toward the prompt return of the child to his or her family, when in accordance with the interest of the child”; and also, “[t]he review must be based on technical evaluations presented by the multidisciplinary teams, and the justification must be objective, appropriate, and sufficient, based on the child’s best interests. It is also necessary to take into account the opinion of the child, his or her parents, family, and other persons who are important in the life of the child with respect to the conditions of application, maintenance, modification, or termination of the protective measures.” (IACHR, *The Right of Girls and Boys to a Family*, 2013, paras. 145 and 244, respectively). See also paras. 173, 196, 243-246.

in order to know if it was possible to advance in the reunification. This decision was subsequently confirmed by the Civil Court of Appeals in August 2022.

49. The ordered evaluation allegedly was not possible given that the mother purportedly did not attend the scheduled interviews with her daughters, which led the Civil Court of First Instance No. 87 to resolve, in February 2023, to implement the warning of ordering the record to be referred to criminal court to investigate the alleged crime of contempt. Subsequently, on March 2, 2023, the Civil Judge issued a resolution instructing the mother to find the necessary means for her daughters to attend on the new proposed dates under warning of considering an eventual breach as an attitude of obstructing justice. The Commission emphasizes that, according to the information provided by the State, on August 12, 2022, Chamber L of the National Civil Court of Appeals stressed that the objective of the evaluations is “to exhaust all means aimed at guaranteeing the children’s rights and to try to make certain the possibility that they might have adequate contact with both parents.”

50. The Commission thus warns that, to date, despite recent actions by the competent Court, no relationship or reunification plan exists between the biological father and the two proposed beneficiaries, with approximately 6 years having gone by without contact between them and despite there being no impediment of a criminal nature to support the restraining order between the involved parties since 2018. In these circumstances, the Commission notes that, over time, Mr. Porretti has presented alternatives to have some kind of relationship with his daughters, considering his status as a diplomat and the children's situation residing in Argentina. In this regard, the Commission does not have assessment elements to know whether these options were evaluated for their eventual implementation, or the reasons why they were not considered relevant, given the assessment of the children's best interests and their circumstances over time.

51. In any event, the Commission warns that, despite having requested an assessment of the children in July 2021 to evaluate reunification, it has taken approximately 2 years to be able to schedule a new interview date for March 2023. In addition, the Commission understands that in August 2022 this decision was upheld on appeal from a lower court, and since then, it has taken more than 7 months to conduct the interview ordered in first-instance court. Taking these circumstances into account, the Commission notes that the present case in fact possesses certain characteristics that make it difficult to assess and implement an effective relationship between the two proposed beneficiaries and their biological father, which is likely to negatively impact the preservation of the bond between the father and his daughters.

52. In this regard, the Commission warns that, based on interviews conducted by the ACID team with the proposed beneficiaries on March 9 and 23, 2023, they are reportedly not receiving psychotherapeutic care currently, despite the fact that this has been requested from the mother. Likewise, ACID identified that the children refuse to bond with their father, concluding that the conditions are not present to continue with the reunification process. In that regard, the Commission notes that the passage of time in this case has had a serious impact on the father-child relationship.

53. However, the Commission notes that there is sufficient evidence within the applicable *prima facie* parameter to assess that there is no relationship between the father and his daughters at present due, first, to the non-review of the 2018 restraining order issued by the competent civil Court; subsequently, due to the alleged delay in beginning to evaluate a possible reunification and relationship; and, finally, due to a series of alleged obstacles or difficulties which have impacted the father-child relationship leading to the fact that, in practice, there has been no contact between the father and his two daughters for an extended time. In these circumstances, the Commission understands that the State must implement the additional actions it deems appropriate to generate, with the support of appropriate professionals and applicable standards on this subject, an effective relationship between the proposed beneficiaries and their biological father in such a way as to enable the development of these bonds during the proposed beneficiaries’ childhood and adolescence, as

determined by their best interests. The Commission notes that this could prevent a situation from consolidating in which the bonds between the proposed beneficiaries and their father are severely impacted.

54. Regarding the assessments, the Commission wishes to point out that, on this occasion, it is not for it to decide on the measures ordered by the Court nor to assess which relationship measures are the most appropriate or sufficient to guarantee the rights to family life and identity, since these determinations depend on considerations that are more typical of the competent domestic authorities and the recommendations of the corresponding child experts, comprehensively taking into account the children's personal circumstances and the children's best interests.

55. Therefore, 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 children C.P.R. and J.P.R. are at serious risk.

56. With regard to the requirement of urgency, the Commission notes that, over time and in the light of the described circumstances, the court measure resulting in the lack of contact between the father and his two daughters has not been reviewed on the basis of their best interests in light of their current circumstances. In these conditions, the Commission considers that urgent measures are required, in view of the risk of impacting the proposed beneficiaries' rights that would occur over time if the current circumstances prevailed.

57. Regarding the requirement of irreparable harm, the Commission considers that it has been met, for 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 occurring damage would likely persist and extend throughout the adulthood of the children C.P.R. and J.P.R. in circumstances where, in fact, an extended period of their childhood purportedly has already elapsed with impacts on the father-child relationship.

IV. BENEFICIARIES

58. The Commission declares that the beneficiaries of this precautionary measure are the children C.P.R. and J.P.R., who are duly identified in this proceeding.

V. DECISION

59. In view of the aforementioned background, the IACHR considers that this matter meets *prima facie* the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of the Rules of Procedure. Thereby, the Commission requests Argentina to adopt the necessary measures to safeguard the rights of the children C.P.R. and J.P.R. In particular, the State must immediately carry out through the competent authorities, and the relevant specialists, an assessment of the children's current circumstances and an evaluation of the precautionary and provisional measure issued in October 2017 by the National Civil Court of First Instance No. 87 which orders the lack of contact between the children and their biological father, taking into account current circumstances and their best interests, in accordance with international standards in the matter.

60. The Commission requests that the Government of Argentina report, within 15 days from the date of this resolution, on the adoption of the required precautionary measures and that it update this information periodically.

61. 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 American Convention and other applicable instruments.

62. The Commission instructs its Executive Secretariat to notify this resolution to the State of Argentina and the applicant.

63. Approved on June 21, 2023, by Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Joel Hernández García; and Julissa Mantilla Falcón, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary