I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Mr. Bismarck de Jesús Martínez Sánchez in Nicaragua. At the time of making the decision, the Commission assessed that, according to the information available, the beneficiary’s lifeless body was found. Following the State’s request to lift, and considering that the beneficiary’s representation has not responded to any of the requests for information during the process, the Commission does not have elements to consider that the procedural requirements continue to be met. In this regard, having located his whereabouts, the IACHR mourns the death of Mr. Bismarck de Jesús Martínez Sánchez and, by virtue of the change in circumstances, considers that the precautionary measures have become moot.

II. BACKGROUND INFORMATION

2. On September 6, 2018, the IACHR granted precautionary measures in favor of Mr. Bismarck de Jesús Martínez Sánchez, in Nicaragua. In the matter at hand, the representation is exercised by Myrlhem Graciela Martínez Méndez, the beneficiary’s daughter. The request for precautionary measures alleged that Mr. Bismarck Martínez’s whereabouts were unknown since June 29, 2018. The Commission found that the exact location of Mr. Martínez Sánchez, who was said to be an “active worker of the Managua mayor’s office”, had been unknown for more than two months. It was taken into consideration that a complaint was filed with the police on July 1, 2018, and there being a police investigation report, there was allegedly no information on the circumstances he was facing.1

3. Upon analyzing the submissions of fact and law furnished by the representation and in the absence of a response from the State, the Commission considered that the information presented demonstrated prima facie that Mr. Bismarck de Jesús Martínez Sánchez was in a serious and urgent situation of irreparable harm. Consequently, pursuant to Article 25 of its Rules of Procedure, the Commission requested that the State of Nicaragua: a) adopt the necessary measures to protect the rights to life and personal integrity of Mr. Bismarck de Jesús Martínez Sánchez and, in particular, to determine his whereabouts or fate; and b) report on the actions taken to investigate the alleged facts that gave rise to the adoption of this precautionary measure.2

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

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. On April 19, 2021, updated information was requested from both parties. Updated information was again requested from the parties on March 14, 2022. On April 11, 2022, the State filed a request to lift the precautionary measures. On July 27, 2022, the representation was forwarded the State’s request to lift the measures. On March 6, 2023, the request for information made on July 27, 2022 was reiterated to the representation. Throughout the term

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of this procedure, the representation has not submitted a response to the Commission, and the granted deadlines have since expired.

A. Response from the State

5. The State filed a request to lift the measures on April 11, 2022. In this request, the State indicated that it was not required to keep the precautionary measures in force given that the necessary investigations had been carried out to determine that Mr. Bismark Martínez had been kidnapped, tortured, and killed by “terrorists.” The facts were reportedly processed by the courts of justice, and the process has been allegedly archived upon applying the Amnesty Law of June 2019, “which constituted the expression and contribution, to ensure peace and reconciliation in the country, under the principle of non-repetition.”

B. Information provided by the representation

6. The representation has not submitted further information since these precautionary measures were granted. Having all deadlines expired, the Commission had not received any reply from them.

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

7. 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.

8. 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.3 Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.4 To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.5 Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under consideration by the organs of the inter-American system. 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

3 See in this regard: I/A Court H.R. Matter of the Yare I and Yare II Capital Region Penitentiary Center, Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela, Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. Case of Carpio Nicolle et al. v. Guatemala, Provisional Measures, Order of July 6, 2009, considerandum 16 [Available only in Spanish].


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.

9. 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 shall assess whether the serious and urgent situation and the risk of irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider if new situations have arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

10. 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.6 In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.7 The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, in addition to the lack of imminent risk, may lead to the lifting of international protection measures.8

11. The Commission has followed up on this matter through requests for information to the parties. In this context, following the information provided by the State on the identification of the beneficiary’s body and the subsequent request to lift these measures, the IACHR requested information from the representation. Following the request for information, the Commission received no response from the representation.

12. The Commission observes that these measures were granted for the purpose of “adopting the necessary measures to protect the rights to life and personal integrity of Mr. Bismarck de Jesús Martínez Sánchez and, in particular, to determine his whereabouts or fate.”9 In this regard, the Commission has considered the information provided by the State reporting the discovery of the beneficiary’s body, as well as public information in which the Nicaraguan Institute of Forensic Medicine confirms that the human remains found in Jinotepe, Carazo are the beneficiary’s.10

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6 I/A Court H.R., Provisional Measures regarding Mexico, Order of the Court of February 7, 2017, paras. 16 and 17. Available [only in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf
7 Ibidem
8 Ibidem
13. The representation has not challenged State allegations, despite having been requested observations in this regard. The Commission regrets the lack of response from the representation, inasmuch as it prevents this Commission from knowing their opinion on the State’s allegations, as well as any observations that they may wish to present in the framework of the proceeding at hand.

14. The Commission mourns the death of Mr. Bismarck de Jesús Martínez Sánchez and, by virtue of the change of circumstances, considers that the measures are now moot. In this regard, considering the analysis previously carried out and taking into account the State’s request to lift, the Commission understands that it does not have the elements to indicate that the requirements of seriousness, urgency, and the need to prevent a risk of irreparable harm have been met. Consequently, the Commission considers that these precautionary measures should be lifted.

15. Lastly, the Commission considers it important to clarify that lifting these precautionary measures does not imply that the State has complied with the present precautionary measures. Assessments of the State’s liability may be analyzed in a possible petition if the legal requirements are met. Notwithstanding the aforementioned, the Commission recalls what was indicated in 2019, when it expressed its “concern about the Amnesty Law approved by the National Assembly of Nicaragua, whose broad-reaching and ambiguous content may result in grave, widely documented human rights violations going unpunished and prevent the establishment of truth, justice, reparation and guarantees of non-repetition, as well as restrict the rights and guarantees of Nicaraguan society that are set out in the American Convention.”

V. DECISION

16. The Commission decides to lift the precautionary measures granted in favor of Bismarck de Jesús Martínez Sánchez in Nicaragua.

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

18. Approved on August 29, 2023, by Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Julissa Mantilla Falcón; Edgar Stuardo Ralón Orellana; and Carlos Bernal Pulido, members of the IACHR.

Jorge Meza Flores
Assistant Executive Secretary

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