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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 67/2023**

Precautionary Measure No. 402-23  
E.R.L. regarding Colombia<sup>1</sup>  
November 20, 2023  
Original: Spanish

**I. INTRODUCTION**

1. On May 23, 2023, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by Daniela Alejandra Ordoñez Kandia<sup>2</sup> (“the applicant”), urging the Commission to require the Republic of Colombia (“the State” or “Colombia”) to adopt the necessary measures to protect the rights to life, health and personal integrity of E.R.L. (“the proposed beneficiary”), who is in a condition of cognitive and motor disability. According to the applicant, the life and integrity of the proposed beneficiary are at imminent risk due to his situation of abandonment and neglect, which make it impossible to provide the medical and social assistance that he allegedly requires to treat his health condition.

2. The IACHR requested information from the parties on June 9, 2023, in accordance with Article 25 of the Rules of Procedure and received responses from the applicant on June 15 and 30, August 23, and October 6, 2023. The State issued a report on July 6, 2023, after having been granted a time extension.

3. Upon analyzing the submissions of fact and law offered by the parties, the Commission considers that the information presented shows *prima facie* that E.R.L. is in a serious and urgent situation, given that his rights to life and personal integrity are at risk of irreparable harm. Therefore, based on Article 25 of its Rules of Procedure, it requests that Colombia: a) adopt the necessary measures to guarantee the rights to life, personal integrity, and health of E.R.L. In particular, that the necessary medical care is adopted based on the medical and socioeconomic assessments, and to ensure that it is received in an adequate and timely manner; and b) consult and agree upon the measures to be adopted with the beneficiary and his representative.

**II. SUMMARY OF FACTS AND ARGUMENTS**

**A. Information provided by the applicant**

4. Mr. E.R.L., 39 years old, reportedly suffers from epilepsy, generalized idiopathic epileptic syndrome, moderate protein-calorie malnutrition, and unspecified urinary incontinence. In 2018, the proposed beneficiary allegedly suffered a fall from a tree that caused severe head trauma, consequently, he had to undergo surgical intervention. Because of the foregoing, Mr. E.R.L. purportedly presents the following sequelae: motor aphasia, right hemiplegia, and the aforementioned epilepsy. Attached was a diagnosis issued on December 21, 2021, by the Bucaramanga Health Institute E.S.E. ISABU, and a medical history dated January 20, 2022, by the International Hospital of Colombia.

5. The neurological sequelae affect the quality of life of the proposed beneficiary, triggering episodes

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<sup>1</sup> In accordance with Article 17.2 of the IACHR Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the debate and deliberation of this matter.

<sup>2</sup> The request is submitted by a member of the Office of the University of Santander who acts as an “unofficial agent”.

of seizures and alterations in consciousness. Furthermore, his motor disability generates significant difficulties in performing basic daily tasks, such as eating, washing, dressing, moving, and urinating, since he does not have the accommodations or assistance of third parties to do so. He reportedly has cognitive and motor disabilities. He is allegedly dependent on the economic support and care of his mother, with whom he resides. His mother is reportedly elderly and addicted to alcohol. She is allegedly absent from her home frequently, leaving the proposed beneficiary in a condition of abandonment. Specifically, it was reported, and documentary support was submitted, indicating that the proposed beneficiary purportedly remains tied to the bed board, naked, without eating food, and without the possibility of moving for several days. He allegedly stays in a room with only one natural light source (the hole in the door).

6. Regarding medical treatment, it was indicated that on January 20, 2022, the International Hospital of Colombia prescribed the proposed beneficiary to take medications that control seizure disorders: valproic acid 250mg/5mg (every 8 hours) and phenytoin oral suspension (every 12 hours). The attending physician specified in the prescription that “the patient must maintain the indicated pharmacological treatment continuously and without interruptions to avoid [illegible] trauma, accidents, status epilepticus and even sudden death associated with epilepsy.” Furthermore, a simple cranial CT scan was ordered, and specialists followed the patient in neurology, physical medicine, and rehabilitation. According to the applicant, the circumstances of extreme vulnerability in which the proposed beneficiary lives have prevented him from complying with the treatment, resulting in the deterioration of his health conditions. Moreover, as of the date of the last information sent by the applicant, the aforementioned tomography had reportedly not been performed, nor did he receive the prescribed specialized care. This allegedly makes it impossible to have an ideal, detailed, and updated diagnosis, as well as a treatment, and rehabilitation plan.

7. An appeal for protection of constitutional rights was filed on October 27, 2021. On November 11, 2021, Bucaramanga’s Eighth Civil Court of the Circuit ordered the inclusion of the proposed beneficiary and his family unit in the family basket program and to guarantee his affiliation with a Health Promotion Entity (*Entidad Promotora de Salud*, EPS). On January 12, 2022, Bucaramanga’s Eighth Civil Court of the Circuit resolved to overturn the event that generated the appeal for protection of constitutional rights because E.R.L. was now included in the basic family basket. The Court ordered the Health Secretariat of Santander and the Office of Sisbén Bucaramanga to provide advice to the mother of the claimant in order to guarantee his affiliation to an EPS. The Superior Court of the Judicial District of Bucaramanga revoked the matter concerning affiliation to the EPS. On March 4, 2022, Bucaramanga’s Eighth Civil Court of the Circuit rejected the appeal for contempt of court that was presented, on the grounds that it exceeded what corresponds to the basic basket.

8. On August 4, 2022, an appeal for protection of constitutional rights was filed to order the EPS Coosalud and the Health Secretariat of Santander to evaluate the transfer of E.R.L. to an institution that provided the necessary care for his diagnosis. On August 17, 2022, the Fifth Municipal Civil Court for the Execution of Judgments assessed that:

“in this case, being a person with a serious illness, subject to special constitutional protection, and due to the pathologies that afflict him, his health conditions may vary drastically at any time”.

9. The Court ordered the Coosalud E.P.S. to “perform a specialized medical evaluation of E.R.L. at his home within the term of forty-eight (48) hours [...], so that the attending physicians, under scientific parameters and linked by the ethical and disciplinary rules of the profession, determine the need to intern the patient intramurally because of his pathologies, in a place where they can take care of his basic needs

such as food, hygiene, medical care, and other care that is considered necessary by the person who treats him.”

10. On September 21, 2022, the First Civil Court of the Circuit for the Execution of Judgments ordered Coosalud EPS that:

“in the event that the physicians do not consider the indicated intramural care appropriate (...), an interdisciplinary group made up of the treating physician, nutritionist, and social worker, linked to the defendant EPS or to its network of service providers, shall subsidiarily assess whether Mr. E.R.L.; according to his economic, social and medical situation and that of his family unit; requires the service of a caregiver and, if so, the conditions of manner and time in which it must be provided. In so doing, if the interdisciplinary group finds that Mr. E.R.L. does indeed need the caregiver service, it must be provided within seventy-two (72) hours following that positive determination, if any, following the provision guidelines and preconditions established by the group.”

11. An appeal for contempt of court was filed requesting compliance with the appeal for protection of constitutional rights ruling of September 21, 2022. Coosalud EPS replied to the Court that on October 19, 2022, IPS Health & Life conducted a medical board of specialists, who evaluated the need to hospitalize the patient intramurally. In this regard, they considered that:

“that the patient is in a condition of social abandonment, he does not have an efficient caregiver or an environment that ensures sanitary conditions, the follow-up to medical recommendations, psycho-emotional accompaniment, assistance in basic care, therefore putting his health, physical and psycho-emotional integrity at risk.”

12. The medical board determined that the case be reported as “social abandonment to be institutionalized in a place that provides basic conditions of care and assistance, to ensure an improvement in his health condition and quality of life”. It also determined that the medical follow-up by in-home program, psychiatry, neurology, and strict case follow-up by social work and psychology should carry on. The assessment by social work indicated that the mother of the proposed beneficiary “tends to be complicated, conflictive, and a consumer of alcohol”, who also “avoids giving [the proposed beneficiary] food so that he does not defecate”. Moreover, it indicated that “[t]he housing in which the patient is located is not suitable nor is it fit for the patient’s care, he does not have adequate hygiene habits due to the lack of constant assistance; it is made of irregular wooden material, with a surface of burnt cement, and he has no space of his own.” On October 25, 2022, the Fifth Municipal Court for the Execution of Judgments terminated the appeal for contempt of court and ordered to refer the appeal procedure to the mayor’s office of Bucaramanga in order to inform them of the proposed beneficiary’s situation, for what falls under their jurisdiction.

13. On March 7, 2023, a request for verification of compliance with the appeal for protection of constitutional rights’ judgment issued on September 21, 2022, was submitted to Bucaramanga’s First Civil Court of the Circuit for the Execution of Judgments in order to determine whether Coosalud E.P.S. had fully complied with this order. Furthermore, various rights of petition were presented in favor of the proposed beneficiary, requesting that E.R.L. be paid attention to. These were addressed to different institutions such as the Colombian Institute of Family Welfare (*Instituto Colombiano de Bienestar Familiar*, ICBF), and the Department for the Inclusion of Persons with Disabilities, among others. Despite having received some responses, the request indicated that no entity provided care to the proposed beneficiary.

14. On June 28, 2023, a working table was held with the participation of E.R.L.'s representative, the Legal Secretariat of Constitutional Actions of the mayor's office of Bucaramanga, the Legal Secretariat of Constitutional Actions of the municipality and the Social Development Secretariat. At that meeting, reference was made to the medical evaluation carried out on May 19, 2023, which determined that the proposed beneficiary suffers from "problems related to reduced mobility, cerebral infarction of the left middle cerebral artery (LMCA), epilepsy secondary to traumatic brain injury (TBI), mixed incontinence, right hemiplegia, and protein-calorie malnutrition". Furthermore, the physician who carried out the aforementioned assessment corroborated that the proposed beneficiary has reportedly had an increase in the frequency of seizures due to the lack of medication administration; had absolute dependency to perform basic activities of daily life; and allegedly requires permanent care by a suitable and responsible caregiver, according to the Red Cross evaluation scale. The proposed beneficiary was reported to be at high risk of developing pressure ulcers. His nutritional condition allegedly also presents a high risk. It was also reported that a family basket and toiletries have been provided monthly for the proposed beneficiary, but that these have been sold by his mother who leaves him alone for days, without providing him with food, medicine, or the necessary care. Moreover, the mother is constantly absent, and the house remains closed, which prevents the performing of physiotherapy treatment, medical checks, or other procedures essential for the improvement of Mr. E.R.L. The mayor's office of Bucaramanga presented the record of a visit made to the proposed beneficiary's home on June 26, 2023, in which it was reported that it was not possible to enter the home, which was closed, but it was observed that E.R.L. was lying on a mat with a diaper, without having a shirt or any trousers on. The inter-institutional meeting concluded the need to institutionalize the proposed beneficiary. As a result, it was agreed the following: a) specify the place of institutionalization of Mr. E.R.L.; b) specify the exact date of his transfer, which will be provided by the Social Development Secretariat in collaboration with the Mayor's Office; c) carry out the pertinent procedures before the Protection of Constitutional Rights Judge for the issuance of the judicial order that allows this transfer; d) continue to provide hygiene products and the family basket to the proposed beneficiary, according to the established terms, provided by the Social Development Secretariat; and e) bind the Office of the Attorney General to monitor compliance with the agreed measures.

15. On August 23, 2023, it was reported that the proposed beneficiary was urgently transferred to the HIC International Hospital of Colombia and that he was discharged days later and sent to his place of residence.

16. On July 21, 2023, an appeal for protection of constitutional rights was filed before Bucaramanga's First Municipal Criminal Court for Adolescents with guarantee control function. In it, it was requested to order Coosalud EPS, the Bucaramanga Superintendence of Health, and the HIC International Hospital of Colombia to establish which entity was going to be responsible for assuming the transfer and institutionalization of E.R.L. and that [this institutionalization] be maintained uninterruptedly. In response to the appeal for protection of constitutional rights, the HIC Hospital informed that E.R.L. had been hospitalized on July 6, 2023, for "controlled structural epilepsy, protein-calorie deficit malnutrition, and post-traumatic hydrocephalus" and that he was discharged on July 18, 2023, with a management plan. On July 27, 2023, the Court ordered the certification of the proceedings to Bucaramanga's Fifth Municipal Civil Court for the Execution of Judgments, so that this judicial agency could require compliance with the judgment or open a procedure of appeal for contempt of court. The representation challenged this decision and on August 28, 2023, Bucaramanga's Fourth Criminal Court of the Circuit for Adolescents with Knowledge Functions confirmed the court decision and added that it was up to the specialized attending medical personnel, according to scientific information, and not to a constitutional judge to indicate the ideal health establishment for the immediate transfer of E.R.L.

17. On August 27, 2023, the Fifth Municipal Court for the Execution of Judgments opened an appeal for contempt of court against Coosalud EPS for non-compliance with the judgment of August 17, 2022. The court requested the presentation of evidence and proof to demonstrate that “the provision of the internment service in a specialized medical center” had reportedly been guaranteed to E.R.L. [The court] also urged for the fulfillment of the “provision of the internment service in a specialized medical center providing the basic conditions of assistance and care, and ensuring an improvement in health condition and quality of life” of E.R.L. On September 13, 2023, the representative presented an appeal for contempt of court on the judgments of August 17, 2022, and September 21, 2023, before Bucaramanga’s Fifth Municipal Civil Court for the Execution of Judgments. On September 18, 2023, the Court required Coosalud EPS to comply with the provisions of the aforementioned judgments and “proceed to guarantee [E.R.L.] the provision of the internment service in a specialized medical center in accordance with the interdisciplinary assessment ordered in the assessment of October 19, 2022.” The judge granted a deadline of 48 hours for the restoration of E.R.L.’s fundamental rights.

18. On October 3, 2023, the judge issued an order of evidence requesting that Coosalud EPS report whether it had complied with the order of August 17, 2022. The applicant indicated that the proposed beneficiary’s institutionalization order remains unfulfilled.

## **B. Response from the State**

19. The State considers that the requirements contemplated in Article 25 of the Rules of Procedure are not met. It indicated that the measures adopted have been “suitable to mitigate the proposed beneficiary’s risk,” consequently, citing the principle of complementarity, it warns of the inadmissibility of granting international precautionary measures. The State argued that the EPS Coosalud has deployed the management actions for the provision of health services in favor of the proposed beneficiary in order to ensure his access to all services ordered by his attending physician. It also noted that both the National Superintendence of Health and the Santander Health Secretariat have constantly monitored the steps taken by the EPS to guarantee the rights of Mr. E.R.L.

20. The State described the existing regulatory framework for persons with disabilities, which includes a health benefit plan, rehabilitation care, and access to functional rehabilitation; as well as the activation of the General Health Social Security System, which includes mental health and hospitalization of patients with “disorders” or “mental illness” of any type that so warrants with resources from the Training Payment Unit (*Unidad de Pago por Capacitación*, UPC).

21. The State mentioned the process of implementing the Certificate of Disability and the Registry of Location and Characterization of Persons with Disabilities (*Registro de Localización y Caracterización de Personas con Discapacidad*, RLCPD), stressing that Statutory Law 1751 of 2015 defines the State’s obligations on actions to promote, protect, diagnose, treat, rehabilitate and alleviate the illnesses of people residing in its territory; and Law 1618 of 2013 that determines that people with disabilities are exempt from the collection of moderating fees.

22. Regarding the proposed beneficiary’s situation, the State specified that on June 29, 2023, the EPS Coosalud reported that “there is, at present, an evaluation by an attending physician who considers that [the proposed beneficiary] does not fit the medical criteria for the provision of intramural services, therefore his request is not admissible due to its lack of medical relevance.”<sup>3</sup> The foregoing, despite the assessment presented by the user on August 26, 2022, where a home medical assessment was requested

<sup>3</sup> Electronic communication from COOSALUD EPS dated June 29, 2023.



to define intramural services after the determination of the need to hospitalize the proposed beneficiary.

23. Moreover, regarding the monitoring and surveillance carried out on the EPS Coosalud by the National Superintendence of Health, it was reported that “[o]nce the entity’s information systems were verified, the health claim of August 23, 2022, related to the authorization and programming of specialized home medical assessment in order to define the need to intern the patient intramura[lly] was found.” EPS Coosalud replied on August 30, 2022, that the in-home specialized medical assessment was effectively provided on August 25, 2022, by IPS Health & Life. Furthermore, on June 15, 2023, the insurer was allegedly required to report on compliance with the protection ruling issued by the Fifth Municipal Civil Court for the Execution of Judgments - Santander Bucaramanga - and guarantee the provision of the services required by the proposed beneficiary per what was ordered and prescribed by the attending physicians.

24. The EPS Coosalud attached the teleconsultation care provided to E.R.L. on May 19, 2023, as well as the home therapies performed on June 7, 9, 10, 11, 12, and 14, 2023. The medical care carried out through teleconsultation on May 19, 2023, recorded the following as E.R.L.’s diagnosis:

“problems related to reduced mobility, epilepsy, mixed incontinence, cerebral infarction, protein-calorie malnutrition, right hemiplegia. The Objective Patient is currently stable, tolerating oral route [medication], and has not had to go to the emergency department in the last month. He had new seizures 15 days ago due to lack of medication.” Likewise, it was recorded that “the mother does not administer medication”.

25. The physical examination indicated that the proposed beneficiary has an “absolute inability to walk, even with external help”. According to the Barthel Scale, it was determined that the patient presented mixed incontinence and total dependence for activities such as eating, washing, dressing, grooming, moving, and ambulation, among others. According to the Norton Scale, it was recorded that the general physical condition of the proposed beneficiary is steady, his mental state is lethargic, and he is immobile and bedridden. Consequently, there is a very high risk of pressure ulcer 7/20. Furthermore, per the Red Cross Scale, “[g]rade 5 immobility in bed or armchair” was determined, stating that he “needs care by an appropriate caregiver and/or constant caregivers and total incontinence...”. The nutritional screening was also included which determined that the [proposed beneficiary] is at “high nutritional risk. A more thorough examination of his nutritional status is required.” In this regard, it was recorded that the proposed beneficiary “does not always have enough money to buy the food he needs, and he cannot physically go shopping, cook or feed himself.” The medical evaluation recommended the following as a management plan: a medical evaluation in one month, 36 physical therapies for 3 months, evaluation by a nutritionist, diapers for 3 months, valproic acid and phenytoin (epamin).

26. The State indicated that an appeal for contempt of court had been filed in October 2022 in response to the effective compliance by the Coosalud E.P.S. Similarly, the court order was sent to the municipality of Bucaramanga so that, in response to what was described in the assessment, taking into account the situation of indigence and the need to institutionalize the patient for the abandonment in which he finds himself, the entity will take the necessary steps to place the patient where appropriate. The State also pointed out that on June 15, 2023, the National Superintendence of Health required the Coosalud EPS to report on compliance with the appeal for protection of constitutional rights’ judgment of August 17, 2022, in order to guarantee the services required by the proposed beneficiary as prescribed by the attending physician. The State stated that the Superintendency will continue to follow up on the case.

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

27. 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 functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the 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.

28. 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.<sup>4</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights.<sup>5</sup> 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 proposed beneficiary would be exposed if the measures are not adopted.<sup>6</sup> Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under consideration by the organs of the inter-American system. The object and purpose of precautionary measures is to preserve 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, in this way, 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.

29. In analyzing those requirements, the Commission reiterates that the facts supporting a request

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<sup>4</sup> 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.

<sup>5</sup> 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](#) [only in Spanish]. 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](#) [only in Spanish]. Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5.

<sup>6</sup> See in this regard: I/A Court H.R. [Matter of Milagro Sala](#) [only in Spanish]. Request for Provisional Measures regarding Argentina, Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5; 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](#) [only in Spanish]. Provisional Measures regarding Brazil, Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6.

for precautionary measures need not be proven beyond doubt; rather, the information provided should be assessed from a *prima facie* standard.<sup>7</sup> When analyzing such requirements, the Commission emphasizes that, by its own mandate, it is not called upon to determine any individual liabilities for the facts alleged. It is also not called upon to determine through this mechanism any violation of human rights included in the applicable instruments, since this would incur an analysis that is specific to a petition or case. The analysis performed herein relates exclusively to the requirements set forth in Article 25 of the Rules of Procedure, which can be resolved without making any determinations on the merits.<sup>8</sup>

30. With respect to the requirement of *seriousness*, the Commission considers that it has been met. When analyzing the available information, the Commission first assesses the medical situation of the proposed beneficiary, which is known to the State through various national authorities. In this regard, the applicant has reported that the proposed beneficiary is 38 years old and suffers from motor aphasia, right hemiplegia, and epilepsy after having sustained a head trauma in 2018. It was also indicated that he is reportedly malnourished. Due to this condition, the proposed beneficiary was identified as a person with cognitive and motor disabilities. The medical treatment that was prescribed to him reportedly establishes that it must be taken “continuously and without interruptions” in order to avoid traumas, accidents, status epilepticus, and even sudden death associated with epilepsy (see *supra* para. 6).

31. For its part, the State confirmed the medical diagnosis of the proposed beneficiary through the medical care report of May 19, 2023 (see *supra* para. 24). It also indicated that he has a “high nutritional risk” (see *supra* para. 25). The Commission also notes that, according to the documentary support provided by the applicant, it was judicially assessed in 2022 that the proposed beneficiary has a “serious illness” and “his health conditions can vary drastically at any time” (see *supra* para. 8). In the Commission’s opinion,<sup>9</sup> his status as a person with a psychosocial and physical disability is relevant when understanding the [proposed beneficiary’s] current specific and particular situation of risk in light of the alleged facts, which was also assessed by the Court in August 2022 when considering him as a “subject of special constitutional protection” (see *supra* para. 8).

32. Second, the Commission observes that the applicant described the situation of the proposed beneficiary as “extremely vulnerable” and that he purportedly has “significant difficulties” in performing daily activities, consequently, he requires support and assistance from third parties. According to the applicant, a medical board considered his case as “social abandonment” on October 19, 2022, (see *supra* paras. 11, 12 and 32). On that same date, social work, in line with what was alleged by the applicants, reported that the mother of the proposed beneficiary is complicated, conflictive, and a consumer of alcohol. It was alleged that she avoids giving food to the proposed beneficiary so that he does not defecate. The information available reflects that it was reported, within the framework of an inter-institutional working table in June 2023, that the mother of the proposed beneficiary allegedly sold the products that were reportedly provided as part of the basic basket, leaving him alone for days without the necessary

<sup>7</sup> In this regard, for instance, referring to provisional measures, the Inter-American Court has indicated that a minimum of detail and information is required to assess, *prima facie*, whether an extremely serious and urgent situation exists. I/A Court H.R., *Matter of the children and adolescents deprived of their liberty in the “Complexo do Tatuapé” of the Fundação CASA*. Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

<sup>8</sup> In this regard, the Court has indicated that “[it] cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons.” See in this regard: I/A Court H.R. *Matter of James et al. regarding Trinidad and Tobago*. Order of the Inter-American Court of Human Rights of August 29, 1998, considerandum 6; I/A Court H.R. *Case of Barrios Family v. Venezuela* [only in Spanish]. Provisional Measures, Order of the Inter-American Court of Human Rights of April 22, 2021, considerandum 2.

<sup>9</sup> Committee on the Elimination of All Forms of Discrimination against Persons with Disabilities. [Practical Guide for the Establishment of Supports for the Exercise of the Legal Capacity of Persons with Disabilities](#), of the Follow-up Committee of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, OAS, pp. 14-15



care. The information provided by the applicant also reflects that the housing conditions of the proposed beneficiary are purportedly not suitable for his medical situation. The mayor's office of Bucaramanga reported that an attempt was made to visit the proposed beneficiary on June 26, 2023, but it was not possible to enter the home that was closed. However, it was observed that the proposed beneficiary allegedly remained lying on a mat with a diaper, and without shirt or trousers (see *supra* para. 14).

33. The Commission notes that what is alleged by the representation also coincides with the information provided by the State. According to the May 2023 medical care that was reported by the State, the proposed beneficiary presents an "absolute inability to walk, even with external help" or has "total dependence for daily activities" (see *supra* para. 25). Furthermore, the State reported that they purportedly do not have enough money to buy their food, nor could they buy, cook, or feed themselves (see *supra* para. 25). In the Commission's opinion, the information available to the parties shows that the proposed beneficiary does not have family support or an adequate and safe space so that he can receive assistance for his medical condition. In this context, the Commission emphasizes that poverty disproportionately affects persons with disabilities. The additional costs of living with a disability amount to an "insurmountable barrier" to the exercise of the rights of this group.<sup>10</sup> Poverty and extreme poverty are presented as environmental and social risk factors that affect the development of a disability, to the extent that they can shape the health condition for its development or the lack of access to preventive measures.<sup>11</sup>

34. Third, the Commission notes that the situation of the proposed beneficiary has been judicially assessed through appeals for protection of constitutional rights, at least, since 2021. In this sense, despite the existence of judicial decisions and the existence of medical assessments that prescribe it, to date the proposed beneficiary is not located in a safe and adequate space for his medical condition. The Commission notes that, internally, various possibilities have been proposed for the best care of the proposed beneficiary, such as the possibility of institutionalization, the assignment of a permanent caregiver for continued unprotected care, and management plans for his medical condition. However, despite the foregoing, to date, the Commission has no assessment elements to confirm whether his medical, social, economic, and family situation has changed. On the contrary, the Commission understands that, internally, the possibility of institutionalization from various local State entities continued to be assessed. However, it was reportedly not carried out to ensure that the proposed beneficiary remained in a safe and adequate environment for his medical condition.

35. Fourth, the Commission understands that health care has not improved over time. Although home medical care and teleconsultation have continued to be provided to the proposed beneficiary, the information available from the State reflects that, according to the medical report of May 10, 2023, the proposed beneficiary continued to present seizures due to lack of medications since his mother does not provide them (see *supra* para. 24). In this regard, the Commission recalls that, according to the parties, the proposed beneficiary allegedly faces serious physical challenges to be able to perform his daily activities. In this regard, the Commission notes that, as discussed at the inter-institutional working table in June 2023, the proposed beneficiary's seizures have purportedly increased in frequency due to the lack of administration of medication (see *supra* para. 14). Moreover, as assessed in the said inter-institutional working table, the mother is allegedly constantly absent and the house remains closed, which prevents physiotherapy treatment, medical checks, or other procedures essential for the improvement of the proposed beneficiary to be conducted (see *supra* para. 14).

<sup>10</sup> IACHR, [Report on Poverty and Human Rights in the Americas](#), September 7, 2017, para. 429 and 430

<sup>11</sup> *Ibidem*.

36. Fifth, the Commission emphasizes that no information has been presented indicating that the health situation within the framework of the particular economic, social, and family situation of the proposed beneficiary, has been addressed or overcome. The foregoing acquires special seriousness considering that various local entities and judicial authorities have been assessing his situation in the last year, and have called for his protection. Furthermore, the Commission notes that certain medical evaluations are still pending, which have not been performed to date (see *supra* para. 6).

37. In view of the foregoing, and considering the assessments regarding the situation of disability, the diseases he suffers, his socioeconomic and family situation, and the impact on his health status, the Commission considers that the rights to life, personal integrity, and health of E.R.L. are at serious risk.

38. Regarding the requirement of *urgency*, the Commission emphasizes that, as reflected in the information provided by the parties, the health situation of the proposed beneficiary is deteriorating given his current situation. In particular, the Commission notes that, in light of the medical assessments, the working table that was carried out, and the judicial orders issued in this matter, there is an understanding that the proposed beneficiary must receive immediate attention, and it is necessary that the State, through its institutions, strengthen its efforts to properly attend to the proposed beneficiary. The Commission considers it important to emphasize that the care provided seeks to contribute to his improvement, with appropriate guarantees of supervision.

39. Regarding the requirement of *irreparable harm*, the Commission considers that the possible impact on the rights to life, personal integrity, and health constitutes the maximum situation of irreparability.

40. On the other hand, faced with the State's argument regarding the non-applicability of the precautionary measures based on the principle of complementarity, the Commission finds that this would signify that the State has performed concrete actions that have allowed the mitigation or reduction of the proposed beneficiary's current risk, in such a way that the requirements of seriousness and urgency are no longer met, whose existence precisely requires international intervention to prevent irreparable harm.<sup>12</sup> In this regard, and after requesting information from the State, the Commission understands that the requirements are met and that it is appropriate to grant precautionary measures in this matter.

#### **IV. BENEFICIARY**

41. The Inter-American Commission declares that the beneficiary of this precautionary measure is E.R.L., who is duly identified.

#### **V. DECISION**

42. The Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, it requests that Colombia:

- a) adopt the necessary measures to guarantee the rights to life, personal integrity, and health of E.R.L. In particular, that the necessary medical care is adopted based on the medical and socioeconomic assessments, and to ensure that it is received in an adequate and timely manner; and

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<sup>12</sup> IACHR, Francisco Javier Barraza Gómez regarding Mexico (PM-209-17), [Resolution 31/2017](#) of August 15, para. 22.

b) consult and agree upon the measures to be adopted with the beneficiary and his representative.

43. The Commission requests that Colombia report, within 15 days from the date of this resolution, on the adoption of the requested precautionary measures and update that information periodically.

44. 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.

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

46. Approved on November 20, 2023, by Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Julissa Mantilla Falcón; and José Luis Caballero Ochoa, members of the IACHR.

María Claudia Pulido  
Assistant Executive Secretary