

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 24/2014
PRECAUTIONARY MEASURE No. 307-14

Matter of Julio César Cano Molina concerning Cuba
September 10, 2014

I. INTRODUCTION

1. On August 4, 2014, the Inter-American Commission on Human Rights (hereinafter 'Commission' or 'IACHR') received a request for precautionary measures presented by the 'Center for Legal Information Cubalex' (hereinafter 'the applicants'), requesting that the IACHR require the Republic of Cuba (hereinafter 'Cuba' or 'the State') to adopt the necessary protective precautionary measures to safeguard the life, personal integrity and health of Mr. Julio César Cano Molina (hereinafter, 'the proposed beneficiary'). According to the request for precautionary measures, Mr. Julio César Cano Molina, who has a mental and intellectual disability, is deprived of liberty, facing a serious health situation and without having access to medical treatment.

2. After analyzing the factual and legal arguments put forth by the applicants, the Commission considers that the information presented shows *prima facie* that Mr. Julio César Cano Molina is in a serious and urgent situation, since his life, personal integrity and health face an imminent risk. Consequently, according to Article 25 of the Rules of the IACHR, the Commission requires that Cuba: a) Adopt the necessary measures to ensure Mr. Julio César Cano Molina's right to life and personal integrity. In particular, that the State provide specialized medical care, taking into account his particular circumstances, according to his pathological conditions; b) Ensure that Mr. Julio César Cano Molina's detention conditions meet international standards, taking into account his current health situation and mental and intellectual disability; and c) Agree on the measures to be adopted with the beneficiary and his representatives.

II. SUMMARY OF THE FACTS AND ARGUMENTS ALLEGED BY THE APPLICANTS

3. On August 13, 2014, additional information was requested from the applicants, who answered on August 18, 2014. According to the request for precautionary measures and the additional information, Mr. Julio César Cano Molina allegedly has a mental and intellectual disability, he is a 45 year-old Afro-descendant and is deprived of liberty in the detention center known as 'Kilometer 5 ½,' in the province of Pinar del Río. The proposed beneficiary has been sentenced to 35 years of imprisonment, for the purported commission of 'many crimes,' including approximately 19 cases instructed from 1999 to 2013. The request for precautionary measures is based on the following purported facts and arguments:

- A. Mr. Julio César Cano Molina suffered from a car accident on 1989, which caused him a fracture of the pelvis, a rupture of his bladder and a cut of his pudendal nerves, which implied permanent urinary incontinence and posttraumatic sexual impotence. In this regard, the applicants submitted the following documents: i) a report from the "Expert Commission of the Forensic Medical Institute," from January 18, 1995, which concluded that his health situation was allegedly not compatible with the penitentiary regime. Especially, the report stated that the proposed beneficiary should have a surgery in specialized hospitals, since the 'National Hospital for Inmates' lacked such technical means; ii) medical certificates and summaries of health records from November 4, 2011; January 24, 2014 and April 21, 2014, which reiterated the initial diagnosis and indicated that, within the last months, the specialized medical staff could not realize a physic examination to the proposed beneficiary, since he was held in detention. Additionally, the applicants stated that Mr. Julio César Cano Molina allegedly suffers from epilepsy, psychiatric disorder and a mental disability

(‘moderated mental retardation’). The applicants sustained that his mental disability allows him to carry on basic functions. However, they pointed out that the proposed beneficiary is not ‘[...] fully conscious of his social behavior [...]’ and that he ‘[...] could not understand the meaning of his actions [...].’

- B. As a consequence of the alleged pathologies, Mr. Cano Molina suffers from a severe sepsis (infection) of the genitourinary tract, subject to a risk of expansion if he is not adequately and immediately treated. Specifically, the alleged infection implied a urine output disorder and bleeding from the urethra. The applicants stressed that those symptoms show the deterioration of his diseases, which have not been ‘duly treated [...].’ In these circumstances, the applicants affirmed the necessity of an urgent surgery to eliminate the severe infection and remove or change the prosthesis to ‘facilitate the urine output. Also, the applicants highlighted that the proposed beneficiary needs a strict follow-up by psychology and psychiatry specialists, in order to implement the adequate treatment.
- C. Mr. Cano Molina is allegedly held in a punishment cell in ‘deplorable conditions,’ apparently due to the ‘stench and nuisances’ caused by his diseases which bothered the rest of inmates. According to information submitted to the proposed beneficiary’s family by another inmate in August 2014, Mr. Cano Molina ‘[...] has been put in a punishment cell, naked and chained. They deny him medical assistance, as well as daily food consisting of breakfast, lunch and dinner.’ Moreover, they affirmed that ‘[...] he is edematous (his whole body is swelling) [...],’ and that the penitentiary authorities allegedly refused to allow the family members to visit the proposed beneficiary and give more information on his detention conditions.
- D. The proposed beneficiary’s family requested on many occasions a license before the Provincial Popular Court of Pinar del Río. In this sense, they alleged that his mental health situation is not compatible with the penitentiary regime, considering that this would constitute exoneration from criminal liability. According to the family, the most suitable treatment could possibly be to place the proposed beneficiary in a ‘social rehabilitation center’ or a hospital ‘with access to psychiatric services.’ The applicants affirm that the relevant authorities allegedly denied such license, on the ground that the proposed beneficiary was purportedly subject to 12 disciplinary measures for ‘misbehavior;’ also, due to his alleged criminal recidivism, he still represented ‘[...] a danger to the rest of society [...].’ According to the information submitted in relation to the proposed beneficiary’s health, the Court determined that the penitentiary establishment shall remain in charge of assuring the required medical care, considering that the detention center ‘[...] possesses the necessary conditions to take care of [his] health.’
- E. The relevant authorities allegedly acted within a context of racial discrimination. Especially, the applicants affirmed that the proposed beneficiary’s family has been mistreated and that the judge supposedly said that ‘[...] the inmate will die in prison, since he will not grant him any license under any circumstance.’
- F. The applicants sustained that the authorities allegedly acted as a ‘[...] retaliation for the claims that were submitted’ regarding the proposed beneficiary’s conditions. In the words of the applicants, Mr. Julio César Cano Molina’s family is ‘[...] terrified because Cano Molina’s life is at risk [...],’ due to the fact that his health condition is ‘deplorable’ and that it ‘[...] worsens every day.’

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

4. The mechanism of precautionary measures is a part of the Commission's function of overseeing Member State 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 set forth in Article 41 (b) of the American Convention on Human Rights, and Article 18 of the Commission's Statute. The mechanism of precautionary measures is set out in Article 25 of the Commission's Rules of Procedure. According to this Article, the Commission issues precautionary measures in situations that are serious and urgent, and where such measures are necessary to prevent irreparable harm to persons.

5. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that precautionary and provisional measures have a dual nature: precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their precautionary nature aims to preserve those rights at risk until the petition in the Inter-American system is resolved. Its object and purpose is to ensure the integrity and effectiveness of the decision on the merits and, thus, avoid infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its Rules of Procedure, the Commission considers that:

- a. 'serious situation' refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American system;
- b. 'urgent situation' refers to a risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and
- c. 'irreparable harm' refers to an injury to rights which, due to their nature, are not susceptible to reparation, restoration or adequate compensation.

6. In the present situation, the Commission considers that the requirement of seriousness is met, in light of the alleged serious deterioration of Mr. Julio César Cano Molina's health, which could have an impact on his right to life and personal integrity. In particular, the information presented suggests that, despite a series of purported pathologies caused by a car accident, the proposed beneficiary currently does not receive the necessary medical treatment. In this sense, the applicants alleged that Mr. Cano Molina's body is now swelling, that he suffers from a severe infection and that he bleeds from the urethra, thus requiring specialized medical care and a surgery that has been recommended since 1995. This situation is exacerbated by the alleged precarious detention conditions and the lack of adequate food supplies, which could worsen his health situation. In this scenario, it is worth mentioning that Mr. Cano Molina might be subject to special care in relation to his purported mental and intellectual disability, and that his family is not allowed to visit him or to know of his current detention conditions.

7. Within the framework of the current analysis, the Commission observes that the information submitted by the applicants is consistent with general information received by the IACHR, through public audiences on the 'Human Rights Situation of Persons with Disabilities in Cuba (150 period of sessions)¹ and the 'Situation of the Persons Deprived of Liberty in Cuba' (147 period of sessions),²

¹ See: IACHR. Public Hearing on the 'Human Rights Situation of Persons with Disabilities in Cuba' (150 period of sessions), from March 25, 2014. Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?Lang=en>

especially concerning the alleged lack of basic medical care that, under certain circumstances, individuals deprived of liberty in Cuba face, as well as the special challenges towards people with disabilities in that country. In this sense, the Commission constantly followed-up those situations within the framework of Chapter IV of many annual IACHR reports.³

8. Taking into consideration the information submitted, which has been analyzed as a whole, the Commission considers *prima facie* that Mr. Julio César Cano Molina's rights to life, personal integrity and health face a situation of risk.

9. Regarding the requirement of urgency, the IACHR considers that it is met, considering that the proposed beneficiary's health situation has recently worsened, and that the information submitted does not suggest that the relevant authorities are providing him medical care. Especially, the documents presented by the applicants and the medical certificates show that the relevant authorities acknowledged his situation, determining that he urgently needs a surgery and stating that the detention center '[...] possesses the necessary conditions to take care of [his] health.' However, this medical attention is not currently provided. Consequently, the Commission considers that it is necessary to immediately implement the required care in favor of Julio César Cano Molina, in light of the effects that the course of time and lack of adequate medical attention might produce on his life, personal integrity and health.

10. Regarding the requirement of irreparable harm, the Commission considers it fulfilled, to the extent that the possible effect on the right to life and personal integrity, as a consequence of his current health situation, represents the most irreparable situation.

11. Under Article 25.5 of the Rules of the IACHR, the Commission generally requests that the State concerned present information prior to taking its decision on a request for precautionary measures, except in a matter such as the present case where the immediacy of the potential harm allows for no delay.

12. Both the Inter-American Court and the IACHR consistently noted that Article 1.1 of the Convention establishes the general obligations that Member States must observe in respecting the rights and freedoms that are enshrined in it, by guaranteeing their free and full exercise to any person who falls within its jurisdiction. Especially, the Inter-American Court considered that States find themselves in a special position in safeguarding those rights to the individuals deprived of liberty, to the extent that the penitentiary authorities are vested with full power in their regard. The Inter-American System expressed the importance and the necessity of protecting the lives and personal integrity of individuals deprived of liberty, and that the penitentiary centers' conditions be in accordance with the international human rights provisions applicable in this matter.

IV. BENEFICIARIES

13. The request for precautionary measures is presented in favor of Julio César Cano Molina, who is duly identified through the documents presented.

V. DECISION

14. In view of the above mentioned information, the Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the Republic of Cuba:

² See: IACHR. Public Hearing on the 'Situation of the Persons Deprived of Liberty in Cuba' (147 period of sessions), from March 11, 2013. Available at: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?Lang=en>

³ See: IACHR. Annual Reports from 2013, 2012, 2011, 2010. Available at: <http://www.oas.org/en/iachr/reports/annual.asp>

- a) Adopt the necessary measures to ensure Mr. Julio César Cano Molina's right to life and personal integrity. In particular, that the State provide specialized medical care, taking into account his particular circumstances and needs, according to his pathological conditions;
- b) Ensure that Mr. Julio César Cano Molina's detention conditions meet international standards, taking into account his current health situation and mental and intellectual disability; and
- c) Agree on the measures to be adopted with the beneficiary and his representatives.

15. The Commission also requests that the Government of His Excellency provide information within a time limit of 10 days from the date that the present resolution is issued, on the adoption of precautionary measures, and provide updated information periodically. Additionally, information is requested on whether Mr. Julio César Cano Molina's family has currently access to him.

16. The Commission wishes to point out that in accordance with Article 25(8) of its Regulations, the granting of precautionary measures and their adoption by the State shall not constitute a prejudging of any violation of the rights protected in the American Declaration on Human Rights or any other applicable instrument.

17. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the Republic of Cuba and to the applicants.

18. Approved on September 10, 2014, by: Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice-President; Felipe Gonzalez, Second Vice-President; Commissioners, José de Jesus Orozco, Rosa Maria Ortiz, Paulo Vannucchi and James Cavallaro.