

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 5/2014

Matter Gustavo Francisco Petro Urrego concerning Colombia
Precautionary Measures N.374-13
March 18, 2014

I. INTRODUCTION

1. On October 28, 2013 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a request for precautionary measures submitted by the "Colectivo de Abogados José Alvear Restrepo (CCAJAR)" and "Asociación para la Promoción Social Alternativa-(MINGA)" (hereinafter "the applicants"), seeking that the Commission require the Republic of Colombia (hereinafter "Colombia" or "the State") to protect the political rights of Mr. Gustavo Francisco Petro Urrego (hereinafter "the proposed beneficiary"), who is the Mayor of the city of Bogota D.C. The request for precautionary measures was filed in the context of individual petition P-1742-13, which alleged violations of the rights to humane treatment (Article 5), to a fair trial (Article 8), political rights (Article 23), the right to equality before the law (Article 24), and judicial protection (article 25) of the American Convention on Human rights (hereinafter "the American Convention"). In particular, applicants require that "in order to prevent irreparable harm to persons or to the matter of the petition, [the Commission must request the State to] suspend the action that was carried out by the Inspector General's Office against Gustavo Petro."

2. During the procedure, the State submitted reports on January 10, 21 and 29, 2014; and on February 7 and 24, 2014. The applicants submitted reports on December 9, 11, 18 and 19, January 3, 13, 16 and 20, 2014; on February 6, 24 and 26, 2014; and on March 3, 4, 5, 6 y 18.

3. After analyzing the factual and legal arguments put forth by the parties, the Commission considers that the information presented shows *prima facie* that the political rights of Mr. Gustavo Francisco Petro Urrego, popularly elected as Mayor of Bogotá and currently in office, are in a situation of serious and urgent risk, since the consolidation of the effects of the resolution of removal and disqualification could render ineffective the eventual decision on petition P-1742-13. Consequently, in accordance with Article 25 (1) of the Rules of Procedure, The Commission hereby requests Colombia to suspend immediately the effects of the decision of December 9, 2013, issued and endorsed by the Inspector General's Office on January, 13, 2014, to ensure the exercise of the political rights of Mr. Gustavo Francisco Petro Urrego and that he remains in office as Mayor of the city of Bogotá D.C. during the term for which he was elected on October 30, 2011, until the Commission has made a decision on the individual petition P-1742-13.

II. BRIEF SUMMARY OF THE FACTS AND ARGUMENTS ALLEGED BY THE PARTIES

4. In the request for precautionary measures and other communications, the applicants have asserted the following arguments:

A. "Mayor Petro was a member of the Guerrilla Movement April 19 (M -19) , [...] and was elected as local Inspector General in 1981 and councilman of Zipaquirá from 1984 to 1986". He was also a member of the political party Democratic Alliance M-19 in 1991 and elected to the House of Representatives in representation of the province of Cundinamarca. In 1998 he was elected to the House of Representatives for Bogota, as a member of the "Movimiento Vía Alternativa". In 2002, he was again elected to the House of Representatives, this time as a member of the "Alternative Democratic Pole" political party. In light of evidence of a plan to kill him (Gustavo Petro), the same year, the Inter-American Commission on Human Rights granted precautionary measures to protect the life and personal integrity [of the proposed beneficiary]. In 2006, Petro was elected Senator of the Republic and, in 2010, was a candidate for the Presidency of the Republic of Colombia on behalf of that political party [Alternative Democratic Pole], and allegedly placed third in voting. On October 30, 2011, he won the election for Mayor of the city of Bogota, by obtaining "721,308 votes" in his favor.

B. In alleged compliance with orders of the Colombian Constitutional Court, which would order, among other things, "to define a scheme of goals [...] intended to formalize and regulate the work of the population of recyclers in Bogotá"- The Mayor of Bogotá established a "public company to take over the provision of cleaning services [,] after December 18, 2012, the date on which the public service contract granted to the private operators expired." According to the applicants, although alleged actions of the Mayor Gustavo Petro were in line with the law, on January 16, 2013, the Disciplinary Board of the Inspector General's Office issued an order to initiate a disciplinary investigation against him for his alleged responsibility for signing inter-administrative contracts and issuing two decrees on December 10 and 14, 2012 . Applicants contend that this procedure is related, among other topics, to alleged "irregularities which occurred while providing the public service of cleaning, [...] in relation to the change of scheme for providing this service", and measures taken by the Mayor of Bogotá to respond to the alleged crisis in the provision of cleaning services, a crisis which allegedly occurred in December 2012, and which, in turn, allegedly caused environmental damage to the city of Bogotá. On December 9, 2013 the Inspector General's Office issued its decision, establishing that "Mr. Gustavo Petro Urrego Francisco was disciplinarily responsible", imposing a penalty of "removal [from the office of Mayor] and disqualification [to hold public office]" for the term of 15 years. On January 13, 2014 Inspector General's Office ratified this decision.

C. The applicants claim that "[T]he Inspector General's Office - an administrative official and not a judicial authority, can confirm the decision of removal and disqualification against Mayor Gustavo Petro Urrego at any time." Additionally, they claim that "the Colombian legal system

does not provide a simple, fast and effective remedy [...] to enable the citizen Gustavo Petro to protect himself against the administrative decision". Incidentally, they stress that "the Colombian Constitutional Court has reiterated in its jurisprudence in the sense that the request for legal protection of constitutional rights (acción de tutela) is not applicable, generally, against a decision by the Inspector General's Office to impose disciplinary sanctions because [the request for legal protection of constitutional rights] is a subsidiary action, and in the case of [...] administrative acts it is up to the administrative jurisdiction to rule on them". With regard to the action that may be brought before the administrative courts, applicants contend that "a legal action to nullify administrative acts and restore rights within the administrative jurisdiction Colombia is a proceeding that can last five or more years and, therefore, is not effective to restore the violated rights in a rapid and effective way." In this regard, applicants argue that the judicial actions available "do not guarantee that there can be a timely and effective legal action to protect these rights."

D. They sustain that the decision of the Inspector General's Office is "overtly disproportionate" and contrary to the provisions of Article 23.2 of the American Convention, which allow the removal and disqualification of elected officials exclusively by "conviction by a competent court in criminal proceedings" and not by administrative decisions. This limit "has been reaffirmed by the recent jurisprudence of the Inter-American Court of Human Rights in the case Leopoldo López Mendoza v. Venezuela."

E. Mr. Gustavo Francisco Petro Urrego "is facing a serious situation that could have a serious impact on protected rights in virtue of an act or omission, and on the effects on a pending decision in a case or petition before the Inter-American System; and similarly, he is facing an urgent situation as there is a risk or imminent threat to political rights that may materialize and cause irreparable harm to the exercise of such rights." In this regard, applicants allege possible irreparable harm to political rights in both their individual and collective dimensions. Regarding the individual dimension, applicants argue that this concerns the effects of the decision on the exercise of political rights by Mr. Gustavo Francisco Petro Urrego. On this point, they emphasize that if "Mayor Petro cannot hold public office for 15 years, [...], the harm that can be caused to Gustavo Petro, an active politician with a long history, is irreparable". Such a situation would prevent him from "the opportunity to run for any public office".

F. In terms of the collective dimension, applicants assert that "in certain circumstances, the violation of political rights has features that can generate serious and irreparable harm to the rights of citizens. In the present circumstances, those who voted for Mayor Petro have been arbitrarily deprived [...] from the right to participate, directly or through freely chosen representatives, in the direction of public affairs", guaranteed in Article 23.1 of the American Convention. Thus, applicants argue that without any criminal sentence, in the course of disciplinary proceedings, a measure that curtails "the possibility to have [as a mayor] a freely elected representative has been adopted". In the words of the applicants, "[t]he right to elect a mayor [,] by way of free choice [,] cannot be repaired with a sum of money [,] nor by a statement

several years later recognizing that political rights of [the] mayor and his constituents have been violated under the Convention".

5. On January 10, 2014, the State submitted its report stating that:

A. Under Colombian law, "public servants are accountable to the authorities not only for violating the Constitution and laws, but also for omissions and for overreaching in the exercise of their functions." In this regard, "Article 118 of the Constitution of Colombia establishes that the Inspector General's Office is the Supreme Director of Public Prosecutions in Colombia, and as a result the protection of the public interest and monitoring of official conduct of those in public office [falls within its domain]". In addition, Articles 275 and 277 of the same law and the Sole Disciplinary Code ("Código Disciplinario Único"), provide that the State controls this disciplinary authority and that it is "the Inspector General's Office that exercises it directly". "The Colombian Constitutional Court [...] in most of its case law has held that disciplinary law guarantees ethical behavior, morality and efficiency of public servants." According to the State, this body specifically analyzed the sanctioning powers, "finding them consistent with the Constitution and the constitutional law."

B. Indeed, "on the 16th January of said year, the Disciplinary Board of the Inspector General's Office [...] issued an order to commence a disciplinary investigation against Mr. Gustavo Francisco Petro Francisco Urrego [...], who holds the title of mayor of the city of Bogotá due to (3) offenses relating to the subscription of an inter-administrative agreement between entities of the city of Bogota, as well as for the issuance of (2) decrees". The opening of said process was presumably motivated "by the submission of several complaints from different public servants in Bogotá [...] as well as by several citizens of the city [...], all related to possible irregularities in the provision of public cleaning services in the city of Bogota". On April 16, 2013, the Disciplinary Board allegedly declared the termination of the investigation. In response to this decision, a motion for reconsideration was presumably filed, which was resolved on May 8, 2013. On June 20, 2013, "[o]nce the proposed beneficiary was heard in a free hearing, the Disciplinary Board [...] issued a decision to press charges against Gustavo Francisco Petro Urrego, in his capacity of the Mayor of the city of Bogota". After both parties' presented their respective arguments and after requests for annulment were resolved, on August 12, 2013 Mr. Petro Urrego filed a motion for reconsideration (reposición). The probationary period was allegedly between the 15th of August and the 8th of October 2013".

C. On December 9, 2013, the Disciplinary Board of the Inspector General's Office issued a ruling stating that "[Petro was] disciplinarily responsible for disciplinary offenses of which he was accused and sanctioned with removal and general inability to hold office for a term of (15) years". Indeed, on January 13, 2014, the Inspector General allegedly endorsed the decision.

D. The State alleges that there are various remedies available for the proposed recipient. As for legal remedies in administrative proceedings, the proposed beneficiary presumably has the

following remedies: a) Appeal for Reconsideration (Recurso de reposición) that could lead to his acquittal, or to a reduction or confirmation of the penalty, b) Motion to Recuse the Inspector General (recurso de recusación); c) motion for direct reconsideration (acción de revocatoria directa). Regarding judicial remedies, the proposed beneficiary presumably has the following resources: a) Motion for Control of legality of the decision (control de legalidad de la decisión sancionatoria), given that disciplinary rulings would be administrative acts, "capable of being challenged in the administrative jurisdiction". "[T]hrough the direct action to nullify an administrative act (medio de control de nulidad) and restore rights" that would allow that "the protected right be remedied and that the damages inflicted by the decision give way to the restoration of rights and consequent compensation." Within the administrative proceedings, there is the "possibility that the claimant, in this case Mr. Petro Urrego, request precautionary measures" for the "provisional suspension of the disciplinary sanction" ; b) Legal request for protection of Constitutional rights (Acción de Tutela), although this "action was declared inadmissible as a principal mechanism for the protection of fundamental rights that are threatened or injured as a result of the issuance of punitive administrative actions", this action "has been found appropriate as a temporary mechanism against administrative actions [,] when seeking to avoid the configuration of irreparable damage, in which case the judge may suspend the application of the administrative act". In addition, it claims that in many stages of several remedies there are alleged conciliation phases for the parties.

E. The State argues that "the decision of the configuration's Office is by no means a definitive decision, but then again it is the Colombian Judicial Branch that will have the final say to determine whether the Mayor can be removed and disqualified from holding public office".

6. On January 16 and 20, 2014, the applicants submitted new reports, stating that:

A. On January 13, 2014, the Administrative Court of Cundinamarca allegedly issued an order, within a legal request for protection of Constitutional rights (Acción de Tutela) filed by an individual, who was appointed to act ex officio on behalf of Mr. Petro Urrego. Said resolution allegedly ordered "to suspend on a temporary basis the legal consequences of the decision issued by the Inspector General's Office," on December 9, 2013, and confirmed on January 13, 2014, "until the adoption of a substantive decision which ends this process." According to the applicants, the referred provisional suspension may be revoked by a higher court, when said court examines the merits of the case. In particular, in view of the jurisprudence adopted by the Grand Chamber of the Constitutional Court regarding the fact that the "Inspector General's Office is indeed competent to investigate and punish civil servants elected by popular vote." In this regard, the applicants reiterate that in the event of a decision by the Administrative Court of Cundinamarca concerning the legal request for protection of Constitutional rights issued by the individual ex-officio, "any of the parties may appeal the decision before the State Council."

B. Despite the abovementioned process initiated by the individual ex-officio, the applicants inform that on January 17, 2014, three judges of the Administrative Court of Cundinamarca allegedly declared “inadmissible” the legal request for protection of Constitutional rights filed directly by Mr. Petro Urrego himself on December 12, 2013. The reasoning behind this resolution supposedly reiterates that the “Inspector General’s Office has powers to investigate and punish civil servants, even those elected by popular vote” and that the “legal protection of constitutional rights is an exceptional mechanism which shall only be used when no other remedies are available to defend the basic rights.”

C. The applicants claim that the report provided by the State is inaccurate, regarding the fact that the decision issued by the Inspector General’s Office is not definite. In particular, since in order to resort to the judicial branch the administrative act must be final and have been executed, that is, it must be producing “the legal effects of the removal and disqualification.” In this sense, they claim that the decision by the Inspector General’s Office “once the remedies filed by Mayor Gustavo Petro and his defense are dismissed, the decision will be final after notice is served.” In this sense, they state that the President of the Republic has allegedly 10 days to issue this decision. Once Mr. Petro is removed from the office of Mayor and the 15-year disqualification period begins, it would be appropriate to file the action to nullify the decision and restore rights with the contentious administrative jurisdiction.

D. The applicants contradict the State’s position, regarding the fact that in the contentious administrative court it is possible to require internal precautionary measures and that these are an ideal remedy. In particular, in view that the “requirement to file the complaint [...] is that the administrative act has been executed, that is, that the removal from office has been conducted, and that the disqualification period has already started.” In this sense, they argue that the contentious administrative process can be extended for an extensive period of time, beyond a year.

E. The applicants reiterate that there is no effective judicial remedy, under the terms of article 25 of the American Convention, to protect the rights of Mr. Gustavo Francisco Petro Urrego and of his voters as Mayor of Bogotá D.C. In this regard, they allege that, if the removal from office was conducted by an order of dismissal, “the harm would be irreparable to the exercise of the Mayor’s mandate and for the citizens who voted Gustavo Petro to manage the city under a concrete government program.”

7. On January 21 and 29, 2014, the State submitted new reports stating that:

A. Indeed, “the decision adopted on December 9, 2013, by this entity, endorsed on January 13, 2014, was temporarily suspended in the framework of a Request for Legal Protection of Constitutional Rights by the Administrative Court of Cundinamarca.” “Despite the existence of this suspension measure, the Inspector General’s Office [allegedly] informed the Government that it has been carrying out the proceeding of notification of the decision declaring the

dismissal.” “According to the Inspector General’s Office, the decision declaring the dismissal could be validly carried out, notwithstanding that when the decision is executed, it is protected by the suspensive effects of the precautionary measure decided in the process of the legal request for the protection of constitutional rights by the Administrative Court of Cundinamarca, if by that date a decision has not been issued, or if a decision is issued in favor of Mr. Gustavo Petro.” Likewise, the State informed that a series of measures of legal protection of constitutional rights were granted, which were aimed at protecting the rights of Mr. Gustavo Francisco Petro Urrego and at suspending the effects of the Inspector General’s Office decision. In this sense, the State indicated that it would be up to the State Council and the Superior Council of the Judiciary to decide on the legality of said judgments. In this regard, it claimed that these bodies have 20 days to adopt a final decision and that “this second-instance decision cannot be appealed and, therefore, its application is immediate, whether the first-instance decision is confirmed or revoked.” The State emphasized that “consistent with the order to suspend the administrative act of dismissal, the President of the Republic could not execute the order of dismissal issued by the Inspector General’s Office,” if the judicial decisions suspending the administrative act of dismissal have not been revoked.

B. It is possible that the Constitutional Court eventually reviews said decisions, pursuant to its discretionary powers. In this sense, it states that “the proposed beneficiary has additional remedies, such as the action to nullify and restore rights,” against the administrative acts issued by the Inspector General’s Office, regarding which a temporary suspension measure could be requested before the State Council.

C. “Regardless of the decision finally adopted by the administration of justice, the Colombian State understands that, to date, the legal debate has been conducted in accordance with the provisions of the national legislation, regarding the legal competencies, and the country’s institutionality is developing, respecting the rights and procedural guarantees.”

8. In a communication dated February 6, 2014, the applicants indicated that, indeed, the processes related to the measures of legal protection of constitutional rights in favor of Mr. Gustavo Francisco Petro Urrego are still pending before the State Council and the Superior Council of the Judiciary. In particular, they stated that “in the event that the second-instance courts (State Council or Superior Council of the Judiciary) make a decision on the challenges [of the initial decisions granting the request for constitutional rights], by which they revoke the decisions of the first instance court suspending the application of the disciplinary sanction, the ten-day term for the President of the Republic to enforce the order of dismissal [of Mr. Gustavo Francisco Petro Urrego] would be reinitiated.” In addition, they indicated that there are criminal investigations being undertaken against Mr. Gustavo Francisco Petro Urrego for several reasons, and that he has not yet been declared guilty.

9. In communications dated on February 7 and 24, 2014, the State indicated that the filing of multiple legal requests for the protection of constitutional rights in order for both institutions to

debate the same legal case would have two implications. "In the first place, given that both the State Council and the Superior Council of the Judiciary have competence to judge said legal requests for the legal protection of constitutional rights in the second instance, it may occur that both decisions are contradictory. Nevertheless, as these two courts have equivalent hierarchy, the disparity in the criteria may only be resolved by the Constitutional Court, which when reviewing the decisions would have to unify the final decision." "The second legal consequence derived from the filing of multiple legal requests for the legal protection of constitutional rights to debate the same legal matter is related to the precariousness of the final nature of second instance decisions adopted by the State Council and the Superior Council of the Judiciary in their respective jurisdictions." In particular, in view that "despite the issuance of the corresponding second instance decisions, by which a final decision about a legal request for the legal protection of constitutional rights in particular is adopted, it is still possible that, due to the large amount of legal requests for the legal protection of constitutional rights filed, any of the first instance courts may issue a new decision contrary to the one adopted in second instance by the highest courts in every jurisdiction." Regarding the criminal investigations conducted by the Attorney General's Office, the State claims that currently 7 criminal investigations are being conducted against Mr. Gustavo Francisco Petro Urrego, and that no final judgment has been issued against him declaring him guilty. Finally, the State affirms that "Colombia is a State based on the rule of law that respects legal and judicial institutions and guarantees the rights of all its citizens, and thus the Colombian institutionality establishes a series of judicial remedies [...]. Therefore, the Judicial Branch is responsible for carrying out the jurisdictional controls corresponding to the legality or constitutionality of the decisions issued by the control bodies, such as the Inspector General's Office."

10. In communications dated on February 24 and 26 and on March 3, 4, 5 and 6, 2014, the applicants continued to provide information, indicating that the Superior Council of the Judiciary had decided to revoke the legal protection for constitutional rights issued to Mr. Gustavo Francisco Petro Urrego. On March 18, 2014, applicants reported that the State Council had also decided to revoke the legal protection for constitutional rights issued to Mr. Gustavo Francisco Petro Urrego. The applicants argued that media have confirmed the decision taken by these bodies. According to the submissions, both instances have taken the decision to revoke the legal protection of constitutional rights on behalf of Mayor Gustavo Petro, on the grounds that "there are other means of legal defense", referring to the use of an Action for Annulment and Restoration of Rights ("Acción de Nulidad y Restablecimiento del Derecho"). Regarding this particular case, the applicants state that: i) to lodge said appeal "it is a prerequisite to attempt to reach a settlement" before the Inspector General's Office; and ii) said appeal is neither simple nor prompt, and could last more than three years. Applicants emphasize that "the domestic remedies offered by the Colombian State are not ideal to protect the political rights of Mayor Petro and his voters, since if the Inspector General's decision was enforced, that is, if the Mayor's removal from the office was conducted, the harm would be irreparable, as it affects rights which 'by their very nature, are irreparable.'" In particular, they state that "even if the Commission and, eventually, the Inter-American Court of Human Rights, ordered the Colombian

Government to restore the political rights of Gustavo Petro, [...] this would take place when it is no longer possible for him to be reinstated as Mayor; consequently, it would not be possible for Gustavo Petro to complete his term in office as Mayor.”

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

11. The mechanism of precautionary measures is part of the Commission’s function of overseeing Member State compliance with the human rights obligations set forth in Article 106 of the Organization of American States Charter. These general oversight functions are set forth in Article 41 (b) of the American Convention on Human Rights, in Article 18 of the Commission’s Statute and the mechanism of precautionary measures is detailed 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.

12. The Inter-American Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”) have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding the precautionary nature, the measures have the purpose of preserving a legal situation while it is under consideration by the IACHR. The precautionary nature aims to preserve those rights at risk until the petition in the Inter-American System is resolved. Its object and purpose are 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 effectiveness (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the concerned State to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purpose of making a decision, and in accordance with article 25.2 of its Rules of Procedures, 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.

13. For the aforementioned reasons and due to the nature of the mechanism for precautionary measures, the Commission would like to note that, regarding the present issue, it may solely evaluate the requests and the information provided to substantiate such requests in relation to the requisites of seriousness, urgency, and the necessity to avoid irreparable harm. In this regard, the IACHR considers it necessary to clarify that it is not a court or an internal body aimed

at determining the criminal, administrative, or disciplinary responsibility of persons. Accordingly, the Commission will examine, in light of article 25 of its Rules of Procedure, the presented requests in relation to the alleged situation of Mr. Gustavo Francisco Petro Urrego.

14. Regarding the content of political rights, the Inter-American System jurisprudence has been consistent in indicating that the effective exercise of political rights is an end in itself and, at the same time, a key means that democratic societies have to ensure other human rights under the Convention[3], as well as that their holders – i.e., citizens – enjoy not only their rights but also “opportunities.” The latter implies an obligation to take positive measures to ensure that any person who holds political rights has a real opportunity to exercise them[4]. In this sense, article 23.2 of the Convention determines the causes that allow restricting the rights recognized in article 23.1, as well as, if appropriate, the requirements that must be satisfied for the restriction to be imposed. In particular, this article provides that: “[t]he law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.” In this regard, the examination of this article acquired particular relevance in the framework of the analysis carried out by the Inter-American System, as a whole, in the Case Leopoldo Lopez Mendoza vs. Venezuela. [3]

15. Taking into consideration the content of the political rights and the particularities of this case, the Commission considers that the requirement of gravity is met in its protective and preventative nature. According to the information provided and not questioned by the parties, on December 9, 2013, the Inspector General’s Office allegedly issued a “disciplinary” resolution, which dismissed and disqualified Mr. Gustavo Francisco Petro Urrego for a 15-year term, for acts allegedly committed under his administration as Mayor of the city of Bogotá D.C. Said decision was allegedly confirmed by the same institution on January 13, 2014. In this regard, on the date of the issuance of this resolution, the Commission has not yet received information on the issuance of a criminal judgment by a competent judge and as part of a criminal process against Mr. Gustavo Francisco Petro Urrego. Consequently, the Commission considers that the application of a disciplinary sanction adopted by an administrative authority could affect the exercise of the political rights of Mr. Gustavo Francisco Petro Urrego, who was elected by popular vote. Likewise, in view that Mr. Gustavo Francisco Petro Urrego is currently holding office, the decision of dismissal could represent the removal from his office as Mayor of the city of Bogotá D.C.

16. In such circumstances, the IACHR received an individual petition, registered under number P-1742-13, which alleged violations of the rights to humane treatment (Article 5), to a fair trial (Article 8), political rights (Article 23), the right to equality before the law (Article 24), and judicial protection (article 25) of the American Convention on Human Rights, against Mr. Gustavo Francisco Petro Urrego. In particular, the Commission notes that this petition alleges the possible lack of compatibility between the decision issued by the Inspector General’s Office and the American Convention on Human Rights, and the potential lack of effectiveness of

the internal remedies available to resolve the current situation, both on the long and short term. In this regard, the primary assessment of the allegations contained in the referred petition, about the possible impact on the exercise of Mr. Gustavo Francisco Petro Urrego's political rights and his potential dismissal as Mayor of the city of Bogotá D.C., determine the gravity of the present matter in its protective and precautionary nature.

17. Regarding the requisite of urgency, the Commission believes this has been demonstrated, insofar as the disciplinary sanction of removal and disqualification against Mr. Gustavo Petro Francisco Urrego could occur at any time and produce effects immediately, given that legal protection of constitutional rights destined to protect the rights of Mr. Gustavo Francisco Petro Urrego had been revoked by the State Council and by the Superior Council of the Judiciary. Such information had been corroborated by different national and international media. In this regard, the Commission notes the various remedies that the State contends Mr. Gustavo Francisco Petro Urrego might seek as well as the assertions by the applicants concerning alleged lack of effectiveness of such remedies. In this regard, the Commission considers that, at this stage, it is not appropriate to rule on the adequacy and effectiveness of those remedies, given that this analysis is contemplated in review of individual petitions. However, the Commission deems it necessary to provide preventive protection and safeguards in this case, given the immediacy of the potential harm and the possibility that such harm may intensify with the passage of time regarding the political rights of Mr. Gustavo Francisco Petro Urrego, due to the lack of certainty that the internal remedies may prevent the removal from his office – until there is a final decision- and in view that the competent authorities may call new elections for the office of Mayor of the city of Bogotá D.C. and that these elections may be held.

18. Regarding the requirement of irreparable harm, the Commission considers that this requirement becomes particularly relevant in situations involving civil servants, elected by popular vote, in virtue of their importance to the democratic system and given the need for the parameters enshrined in the American Convention to be respected in any process leading to the removal, disqualification or dismissal of said employees. In this regard, the IACHR considers that the requirement of irreparability has been met in the present case in its protective and precautionary dimensions. Regarding its protective dimension, if the Inspector General's Office's decision was enforced, it could cause an irreparable harm to Mr. Gustavo Francisco Petro Urrego in the exercise of his political rights and due to the possibility of his dismissal as Mayor of Bogotá D.C., office he was elected by popular vote to hold for a period of four years. This situation could cause a side effect in the right of the persons who voted for Mr. Gustavo Francisco Petro Urrego. As regards the precautionary dimension, it is related to the potential irreparable harm that could be caused in the event the dismissal as Mayor of Bogotá D.C. was materialized, which could render ineffective any possible decision on the referred individual petition. In particular, in view that if said decision was executed, the relevant authorities would

have to call an election to choose a new Mayor¹. Therefore, any possible decision by the IACHR would become abstract and Mr. Gustavo Francisco Petro Urrego would not be able to return to hold the position for which he was elected by popular vote.

IV. BENEFICIARIES

19. The request for precautionary measures has been filed on behalf of Gustavo Francisco Petro Urrego, who is fully identified.

V. DECISION

20. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of seriousness, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests the Government of Colombia to suspend immediately the effects of the decision of December 9, 2013, issued and endorsed by the Inspector General's Office on January, 13, 2014, to ensure the exercise of the political rights of Mr. Gustavo Francisco Petro Urrego and that he remains in office as Mayor of the city of Bogotá D.C. during the term for which he was elected on October 30, 2011, until the Commission has made a decision on the individual petition P-1742-13.

21. The Commission also requests the Government of Colombia to inform the IACHR, within 15 days from the date of this resolution, on the adoption of the precautionary measures requested and update such information regularly.

22. The Commission emphasizes that, according to Article 25 (8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State shall not constitute a prejudgment on any possible violation of the rights protected in the American Convention on Human Rights or other applicable instruments.

23. The Commission orders the Executive Secretariat of the Inter-American Commission on Human Rights to notify the Government of Colombia and the applicants of this resolution.

24. Approved on the 18 day of March, 2014 by: José de Jesús Orozco, President; Tracy Robinson, First Vice President; Commissioners Felipe González, Rose-Marie Belle Antoine, Paulo Vannuchi, and James Cavallaro.

Signed by
Executive Secretary

¹ Article 314 of the Colombian Constitution states that "Whenever the mayor cannot hold office for more than eighteen (18) months before the end of his term, a new election should be held to replace him during the remaining time. If less than eighteen (18) months are left for the end of the term, the governor will appoint a mayor for the remaining time, respecting the political group, party or coalition by which the elected mayor was registered."