

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 57/2016
PRECAUTIONARY MEASURE No. 7-12¹**

Matter of Edgar Tamayo regarding the United States of America
November 14, 2016

I. Background

1. On January 6, 2012, the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a request for precautionary measures presented by the Center for International Human Rights from Northwestern University School of Law (hereinafter "the applicants"), in favor of Edgar Tamayo Arias (hereinafter "the beneficiary"), a Mexican national, and a person allegedly with mental disability, sentenced to the death penalty and whose execution was alleged to be imminent in the state of Texas, the United States. The application was submitted in the context of individual petition P-15-12, which alleges violations of Articles I (right to life), XVIII (right to a fair trial), and XXVI (right to due process) of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration" or "the Declaration"). The applicants requested the Commission to require the United States of America (hereinafter "the State," "The United States" or "The U.S.") to suspend the execution to ensure that the Commission has an opportunity to rule on the merits of the petition and to avoid irreparable harm to the proposed beneficiary.

2. On January 18, 2012, the IACHR granted precautionary measures in favor of Mr. Edgar Tamayo Arias, and requested the United States to adopt the necessary measures to preserve the life and physical integrity of Mr. Edgar Tamayo Arias until the IACHR could decide on the individual petition, in order for the processing of his case before the Inter-American System not to be rendered moot. In this sense, the Commission also requested the United States Government to urgently submit its response about the adoption of the precautionary measures granted and to update this information on a regular basis.

II. Summary of the information provided and procedural actions after the granting of the precautionary measures

3. The Commission did not receive the State's response regarding the adoption of the precautionary measures to suspend the execution of Mr. Edgar Tamayo Arias.

4. On October 10, 2013, the representatives of the beneficiary informed that despite having informed the 209th Judicial District Court of Harris Country, Texas, of the granting of the precautionary measures, this Court proceeded to schedule Mr. Tamayo's execution for January 22, 2014.

5. Based on the aforementioned information provided by the representatives, on November 12, 2013, the IACHR reiterated its request for information from the State on the adoption and implementation of these precautionary measures. The State did not respond.

6. On November 26, 2013, the Commission notified the State its decision of reiterating the granting of the precautionary measures. The State failed to respond again to this decision.

¹ In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner James Cavallaro, a United State national, did not participate in the discussion or vote on this precautionary measure.

7. The Commission has learned, through publicly available information, that Mr. Edgar Tamayo Arias was executed on January 22, 2014. In this regard, on January 27, 2014 the IACHR issued a press release condemning “the execution of Edgar Tamayo Arias, which took place on January 27, 2014, in Texas, United States, in violation of his fundamental rights.”

III. Analysis of the requirements of seriousness, urgency and irreparability

8. 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 the OAS Charter, and in the case of Member States that have yet to ratify the American Convention on Human Rights, the American Declaration of Rights and Duties of Man. These general oversight functions are set forth 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 harms to persons.

9. The Inter-American Commission and Court have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective². Regarding the protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights.³ Regarding the precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR.⁴ As such, for the purposes 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 rights 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 injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

10. Regarding the foregoing, article 25.7 of the Commission’s Rules of Procedure provides that “the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions.” Article 25.9 sets forth “[t]he Commission shall evaluate periodically, as its own initiative or at the request of either party, whether to maintain, modify or lift the precautionary measures in force.” In this regard, the Commission must evaluate whether the situation of seriousness, urgency and possible generation of irreparable harm leading to the adoption of precautionary measures still persist today. Similarly, it must consider whether new situations arising in the follow-up of the precautionary measures meet the requirements under article 25 of its Rules of Procedures.

11. In the instant situation, the IACHR has received information of public access about the execution of Mr. Edgar Tamayo Arias, held on January 22, 2014.

² 2011 IACHR Annual Report, Chapter 3, petitions and cases before the IACHR, Parr. 11. <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp> ; Inter-American Court, Order of the Inter-American Court of October 25, 2012; Request of Provisional Measures regarding the Republic of Peru, Case of Cruz Florez, considering 5.

³ 2011 IACHR Annual Report, Chapter 3, petitions and cases before the IACHR, Parr. 11. <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>

⁴ 2011 IACHR Annual Report, Chapter 3, petitions and cases before the IACHR, Parr. 12. <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>

12. In this regard, the Commission condemns the execution of Mr. Edgar Tamayo Arias and deplores the failure on the part of the United States and the state of Texas to comply with the precautionary measures issued by the Commission. Also, it is important to mentioning the fact that the failure to preserve the life of Mr. Edgar Tamayo Arias, pending a petition before the IACHR, contravenes its international legal obligations derived from the Charter of the OAS and the American Declaration.

13. The Commission condemns the execution of Edgar Tamayo Arias, in disregard of the precautionary measures granted in his favor and despite the fact that his petition before the IACHR is still being considered. Noncompliance with this precautionary measure is detrimental to the effectiveness of the Commission's procedures, depriving sentenced persons of their right of petition in the Inter-American system of human rights and affects his right to life in a serious and irreparable manner.

IV. Decision

14. The Commission considers that the precautionary measures granted in favor of Edgar Tamayo Arias have lost their purpose, as a result of his execution by the United States. Therefore, the Commission decides to lift the present precautionary measures in favor of Edgar Tamayo Arias.

15. The Commission orders the Executive Secretariat of the IACHR to notify this resolution to the United States and the representatives.

16. Approved on November 14, 2016 by: Francisco José Eguiguren Praeli, First Vice-President; Paulo Vannuchi, Esmeralda Arosemena de Troitiño, and Enrique Gil Botero, members of the IACHR.

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Assistant Executive Secretary