



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 43/2020

Precautionary Measure No. 691-20

Facundo José Astudillo Castro regarding Argentina

August 1, 2020

Original: Spanish

I. INTRODUCTION

1. On July 20, 2020, the Inter-American Commission on Human Rights ("the Inter-American Commission," "the Commission," or "the IACtHR") received a request for precautionary measures from Adolfo Pérez Esquivel and Roberto F. Cipriano García, of the Comisión Provincial por la Memoria¹ ("the applicants"), urging the Commission to request the Republic of Argentina ("the State" or "Argentina") to protect the rights of Facundo José Astudillo Castro ("the proposed beneficiary"), who has been missing since April 30, 2020, as he was moving to another city and was detained by police officers for violating the quarantine imposed by the COVID-19 pandemic. Since that day, his whereabouts or location are unknown.

2. The IACtHR requested information from the State on the present situation in the framework of various files on July 8, 2020, in accordance with Article 25.5 of its Rules of Procedure and XIII of the Inter-American Convention on the Forced Disappearance of Persons, and received a report from the State on July 11. In the present case, observations were requested of the State on July 21, and its report was received on July 24, 2020. Both reports have been taken into account.

3. After analyzing the allegations in fact and in law, the Commission considers, from the applicable *prima facie* standard, that Mr. Facundo José Astudillo Castro is in a situation of seriousness and urgency, since his rights to life and personal integrity face a risk of irreparable harm. Consequently, it is hereby requested that the State of Argentina: a) Adopt the necessary measures to determine the situation and whereabouts of Facundo José Astudillo Castro, in order to protect his rights to life and personal integrity. In this regard, the Commission urges the State to guarantee effective search actions through its specialized mechanisms, created for such purposes; b) agree on the measures to be adopted with the beneficiary's relatives and representatives; and c) implement the actions aimed at investigating the facts that motivated the granting of this precautionary measure so as to avoid its reoccurrence.

II. SUMMARY OF FACTS AND ARGUMENTS**1. Information provided by the applicants**

4. The applicants indicated that an Emergency and Necessity Decree was issued on March 19, 2020, ordering preventive and mandatory social isolation in Argentina, which led to the establishment of police controls on the various routes, highways and cities of the country.²

¹ The applicants provided a letter from the mother of the proposed beneficiary, by which she gave her consent to the request for precautionary measures, in accordance with Article 25.6.a of the IACtHR Rules of Procedure.

² The requesting organization indicated that it has recorded numerous arbitrary and illegal police practices in this context, especially by the Police of the Province of Buenos Aires.

5. In this regard, the applicants pointed out that on April 30, 2020, the 22-year-old Facundo José Astudillo Castro undertook a trip from the town of Pedro Luro to the town of Bahía Blanca to collect his belongings from the house of his former partner, which he did by "hitchhiking". Thus, near Hilario Ascasubi, he allegedly got into Mrs. Nancy M.'s car and, upon arriving at the town of Mayor Buratovich, Villarino, was stopped by a police control operation due to the pandemic, and Mrs. Nancy informed him that Facundo stayed at the main access point on National Route No. 3.

6. Later on, around 10:00 in the morning of the same day, the proposed beneficiary was arrested on National Route No. 3 and San José Obrero Street by two police officers for violating the quarantine. The applicant indicated that three witnesses that offered their testimony, who were not summoned to testify in the investigation, informed Facundo's mother that, at approximately 3:30 p.m. on April 30, they passed through the Mayor Buratovich checkpoint, and affirmed that there was no police checkpoint at that time and that, later on, before a large curve, they were able to see a double-cab Toyota Hilux van belonging to the Buenos Aires police, from which two different police officers got out. Near the fence, a young man was passing by, whom they identified as Facundo Castro (they identified a backpack with the brand "Wilson"), the police officers reportedly called him and the witnesses affirmed that he got into the vehicle.

7. The request indicates that, in view of inconsistencies in the statements made by the police officers, who claim to have taken Facundo to another town and to have seen him get into a vehicle or walk away, and in view of an alleged lack of interest on the part of the regional authorities in investigating these events, on July 2, 2020, the mother of the proposed beneficiary, together with his lawyers, filed a complaint with the federal justice system in Bahía Blanca for the forced disappearance of her son.

2. Response from the State

8. The State submitted an initial report on the situation on July 11, 2020,³ in which it indicated that the search for and development of the investigation in the present case must address all possible hypotheses, including "seriously investigating the possibility that we are dealing with a forced disappearance". In turn, it was reported that on July 10, 2020, the United Nations Committee on Enforced Disappearance ("UNCED") issued an urgent action requiring the State of Argentina "to take all necessary measures to search for and locate Facundo José Astudillo Castro and protect his life and personal integrity" and requested protection measures in favor of three witnesses in the case.

9. Subsequently, the State sent its observations under the present proceedings on July 24, 2020, referring to its observations of July 11, and, by way of an update, attached to its communication the report sent to the UNCED on the same date. In this report, it was indicated that the highest authorities of the Nation and of the Province of Buenos Aires are committed to the search for and investigation of the disappearance of Facundo, and that they have contacted his mother. The State also accompanied its report with procedural information on the criminal investigation carried out by the Villarino Prosecutor's Office, the Public Prosecutor's Office of the Province of Buenos Aires, and the Federal Prosecutor's Office of Bahía Blanca. In turn, the writings relating to the collaboration between various authorities are also included. The report presented by the State before the UNCED coincides with the one sent to the IACtHR on July 11, 2020 up to the actions of such date, with subsequent updates. The information in both reports is presented below without distinction.

³

In the framework of a request for information in different proceedings before the IACtHR.

10. Regarding the initial complaint, it was reportedly presented by Ms. Cristina Adriana Castro Alaniz, mother of the proposed beneficiary, on June 5, 2020 at the 2nd Precinct of the City of Villarino, Buenos Aires, for the "verification of the whereabouts" of her son, who disappeared on April 30, 2020. In the investigation, initiated by the Villarino Prosecutor's Office of the Bahía Blanca Prosecutor General's Office, several proceedings were carried out with the participation of the Buenos Aires Province Police

11. On June 26, 2020, Ms. Castro Alaniz went to Federal Prosecutor's Office No. 1 in Bahia Blanca, and requested their intervention, as she considered that the investigation by the provincial prosecutor's office had "serious inconsistencies and contradictions". In this regard, Ms. Castro reportedly informed the federal prosecutor that the last communication she had with her son was by telephone, when police personnel arrested him for violating the quarantine, thus requesting the intervention of the federal justice system "on the suspicion that there may have been abusive conduct by the agents of the aforementioned force". It was reported that the family noticed irregularities and inconsistencies in the testimonies of the Buenos Aires police officers, who supported the investigation, as well as a reluctance on the part of police officers to accept the testimony of witnesses, who claim that, around 3:30 p.m. on April 30, Buenos Aires police officers took Facundo off the road and transferred him in a patrol car.

12. As of June 26, the federal justice system intervened, in charge of Federal Judge No. 2 of Bahía Blanca and Federal Prosecutor No. 1 of Bahía Blanca, Santiago Ulpiano Martínez. The investigation sought all the information on Facundo's telephone line, such as geo-location, last calls and messages, and the Argentine Federal Police was entrusted with investigative tasks, as well as the cooperation of various authorities for joint tracking and intelligence tasks.

13. On July 3, the family and the applicants were added as plaintiffs, who requested that the Buenos Aires police be separated from the investigation and that an investigation be carried out into forced disappearance. The Under-Secretary for Human Rights of the Province of Buenos Aires and the National Secretariat for Human Rights also requested that Buenos Aires police forces be separated from the investigation, while making recommendations and offering to cooperate.

14. On July 9, the police station was raided and security books, records and news were seized, along with the Hilux police mobile phone and the four mobile phones of the police officers who had allegedly had contact with the proposed beneficiary. Furthermore, on July 8, the Federal System for the Search of Missing and Lost Persons of the Ministry of National Security was asked to assist, after which they added Mr. Facundo's data to their system and carried out the relevant procedures, without any significant findings. For its part, the investigation received testimony from various witnesses and offered them a protection program.

15. According to the report, the following actions were taken: automated vehicle location data of vehicles that were in the driving zone between 15:00 and 15: 30 hrs. on April 30th were sent to the Argentine Federal Police for a location and movement report; the Federal Court was asked to allow the companies WhatsApp, Facebook, Microsoft Corp. and Google Inc. to provide the data on Facundo Astudillo's accounts; on July 15th, expert reports were made on two vehicles, including the aforementioned vehicle "Toyota Hilux", in order to compare the samples with those of the DNA of the proposed beneficiary's mother; An expert appraisal was made of the Security Logbook of the Major Buratovich Police Station in order to identify possible alterations in its contents; on July 14, 15, 16 and 17, searches were carried out in various relevant areas with trained dogs, about 200 troops, a helicopter, divers and small boats; searches were carried out in health facilities and hospitals in various locations; on July 22, the Mayor Buratovich Communal Police Substation was raided and searched with the help of dogs, as was the Lieutenant Origone guard post and an additional residence.

16. The State indicated that the advice of the Argentine Forensic Anthropology Team was requested, and a meeting was held with the team on July 14 and 21, together with various authorities and agencies, where work was done on best practices to advance the search and assist the work of the federal justice system. The report also states that meetings were held between authorities and the requesting organization, the Provincial Commission for Memory, in their capacity as applicants for urgent action before the UNCED. Finally, the State indicated that the objective is to seek the urgent recovery of Facundo Astudillo's life and, if appropriate, to investigate and punish those responsible for his disappearance.

17. Included in the annexes of the report is an official letter dated July 20, 2020, addressed to the General Auditor of Internal Affairs of the Government of Buenos Aires, in which a declaration by the mother of the proposed beneficiary is brought to his attention, which states that

Facundo had been (even when he was a minor) subjected to beatings by police personnel, specifically by Officer Berrios (who causally attended the raid that led to his search) in the presence of his fellow members of the Grupo Envió de Pedro Luro, when the aforementioned Officer told Facundo that "he was a jet just like his brother" and hit him in the face and sometime later he deliberately broke one of his motorcycles by intentionally loading it onto the patrol car. His mother, a signatory herein, knows all this from her son, who on more than one occasion told her about the harassment he was experiencing from Officer Berrios, who some time later walked along the side of the road in search of clues as to the whereabouts of his favorite victim.

18. In the same regard, in a letter dated July 15, the Auditor General was informed that, on July 12, 2020, while the lawyer for the family of the proposed beneficiary, Luciano Peretto, Mrs. Castro Alaniz, the authorities and other assistants were carrying out investigative work, an Assistant Police Commissioner of the Province of Buenos Aires, Pablo Reguillon, had told the family's lawyer, verbatim and in the presence of witnesses, "I am saving all the links to the news outlets you spoke with. when this is over I know what I have to do."

19. On the other hand, a report was submitted by the Under-Secretary for Human Rights of the Province of Buenos Aires with the aim of contributing information for urgent action before the United Nations. In its report, the Under-Secretariat notes the inconsistencies or incongruities that have reportedly occurred in the investigation, in relation to statements and actions taken. The Under-Secretariat points out that "the hypothesis of possible responsibility of the police authority for the disappearance" was not assessed and that during the investigation it insisted on the application of the Minnesota Protocol and the subsequent departure of forces belonging to the Buenos Aires Police during the investigation.

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

20. The mechanism for precautionary measures is part of the Commission's mandate to oversee 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 18(b) of the IAC_HR's Statute, while the mechanism of precautionary measures is laid out in Article 25 of the Commission's Rules of Procedure, whereby the Commission grants precautionary measures in serious and urgent situations, and where such measures are necessary to prevent irreparable harm to persons.

21. The Inter-American Commission and the Inter-American Court of Human Rights (the Inter-American Court" or "I/A Court H.R." have established repeatedly that precautionary and provisional

measures have a dual nature, both precautionary and protective. As regards the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are being considered by the IACtHR. The protective nature aims to preserve the rights that may be at risk until the petition that is under consideration in the Inter-American System is resolved. Its object and purpose are to ensure the integrity and effectiveness of the decision on the merits of the case and, in this way, prevent the infringement of the rights at issue, a situation that could render moot or disprove the *effet utile* of the final decision. In this sense, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, to fulfill the ordered reparations. For such purposes, according to Article 25(2) of the 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

22. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the information provided should be assessed from a *prima facie* standard that will enable the Commission to identify a situation of seriousness and urgency.⁴ Similarly, the Commission recalls that it is not called upon to make a determination on the criminal liability of individuals, nor to determine in the present mechanism any violation of due process in the local investigations or proceedings, since this would incur an analysis on the merits, which is specific to a petition or case. The following analysis is based exclusively on the requirements set out in Article 25 of its Rules of Procedure.

23. As a preliminary aspect, the Commission notes that, according to the information provided by the State, the situation of Mr. Facundo José Astudillo Castro has already been the subject of a pronouncement by the UNCED. In this regard, the Commission recalls that Article 25 of its Rules of Procedure does not provide for international *lis pendens* as an impediment to issuing a decision on a request for precautionary measures, contrary to the system of petitions and cases;⁵ this provision establishes that the Commission shall request the adoption of precautionary measures when there is a situation of serious and urgent risk of irreparable harm. In this respect, the Commission notes that the exception of *lis pendens* does not apply to the present case. On the other hand, the pronouncements of other international bodies, such as those of the above-mentioned Committee, may rather constitute an important element of context or indicator to be taken into account in relation to the analysis of the requirement of seriousness.⁶ In the present case, as indicated by the State, after an analysis of the facts

⁴ See in this regard, IACtHR. Matter of the *Miskitu Indigenous Peoples of the Northern Caribbean Coast Region with respect to Nicaragua*. Extension of provisional measures. Order of the Inter-American Court of Human Rights of August 23, 2018, recital 13; I/A Court H.R., Matter of *Children and Adolescents Deprived of their Liberty in the "Complexo do Tatuapé" of the Fundação CASA*. Request for extension of provisional measures. Provisional Measures with respect to Brazil. Order of the Inter-American Court of Human Rights of 4 July 2006. Recital 23. Available at: http://www.corteidh.or.cr/docs/medidas/febem_se_03.pdf

⁵ In this regard, Article 46 of the American Convention on Human Rights establishes that "[f]or a petition or communication presented in accordance with Articles 44 or 45 to be admitted by the Commission, it shall be required a, b] c) That the subject matter of the petition or communication is not pending before another procedure of international settlement

⁶ For example, in the case of Santiago Maldonado regarding Argentina, the Commission appreciated the existence of a pronouncement by the UN Committee on Enforced Disappearances, in which the Committee expressed "its serious concern for the physical and psychological integrity of Mr. Santiago Maldonado [...]" . IACtHR, Santiago Maldonado in respect of Argentina (MC-546-17), resolution 32/2017 of 22 August 2017, para. 15, available at <http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf>. In the case of José Fernando Photo Choto et al. regarding

related to the disappearance of Astudillo Castro, the Committee requested the State "to take all necessary measures to search for and locate Facundo José Astudillo Castro and to protect his life and personal integrity."

24. In the analysis of the procedural requirements, in relation to the requirement of seriousness, the Commission notes that from April 30, 2020 to date, there would be no news about the fate or whereabouts of Facundo José Astudillo Castro. The Commission notes that the latest news about the fate of the proposed beneficiary refers to the fact that police officers detained him with the purpose of sanctioning him for violating the mandatory quarantine and, after such detention, there would be inconsistent versions regarding his fate.

25. In this regard, while the Commission is not called upon to assess the internal investigations and proceedings in this case, in the framework of the analysis of the seriousness requirement, it is noted that actions aimed at determining the whereabouts or fate of a missing person are directly related to the need to prevent the materialization of a violation of their rights and that, as long as their situation has not been clarified, the proposed beneficiary would be at serious risk.⁷ In this regard, the Commission takes note of the allegations made by the applicants, who indicated that the intervention of the Police of the Province of Buenos Aires in the investigations, especially after the federal justice system subsequently took over the investigation, may not have been the most appropriate means of effectively addressing this situation.

26. In fact, according to the file, the members of this institution were the last ones to have contact with Astudillo Castro, and there are also serious allegations about their possible involvement in the incidents.⁸ It was not until 9 July, more than two months after Astudillo Castro disappeared, that a search was carried out at the police station. In addition to the foregoing, the Commission deems it relevant that it was later reported that previous acts of violence and harassment by police officers against the proposed beneficiary has occurred and that, recently, a Deputy Police Commissioner of the Province of Buenos Aires made threatening statements against the family's lawyer because of his statements about the case while he was conducting a search. It should be noted that these issues, among others, were duly highlighted and reported by the human rights units of both the Province of Buenos Aires and the Government of Argentina. In this sense, the Commission observes that all of the facts indicated reflect challenges and obstacles that permeate the search for Mr. Facundo José Astudillo Castro, which has a direct impact on the protection of his rights to life and personal integrity.

27. The Commission takes note of the extensive response provided by the State at various times, and observes that it has reported on multiple proceedings conducted with the participation of various authorities both at the provincial level and since the investigation was transferred to the federal level, actions that would have been implemented with the aim of finding out the whereabouts of Mr. Castro Astudillo and clarifying the circumstances of his disappearance. The Commission takes a positive view of

El Salvador, the Commission took into consideration that there would be an "immediate intervention letter" issued by the United Nations Working Group on Enforced or Involuntary Disappearances regarding the alleged disappearance of the beneficiaries. IACtHR, Case José Fernando Choto Choto et al. regarding El Salvador (MC-240-15), resolution 34/2015 of 28 September 2015, para. 17, available at <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC240-15-ES.pdf>; also, in the case of Daniel Ramos Alfaro regarding Mexico, the IACtHR took into account the existence of a decision by the UN Committee on Enforced Disappearances of 2 December 2013 on the alleged facts. IACtHR, Case Daniel Ramos Alfaro regarding Mexico (MC-453-13), Resolution 3/2014 of 20 February 2014, para. 9, available at <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC453-13-ES.pdf>.

7 See: I/A HR Court. Resolution of the Inter-American Court of Human Rights of May 26, 2010, Provisional Measures Regarding the United Mexican States, Case of Alvarado Reyes et al, para. 9. Available at: https://www.corteidh.or.cr/docs/medidas/alvarado_se_01.pdf.

8 In this respect, the Commission recalls that, in relation to the duty of due diligence in criminal investigations, the authorities must be independent and impartial. See: IACtHR. Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370, para. 233.

the actions of the human rights departments of the Province of Buenos Aires and the Government of Argentina, the activation of the Federal System for the Search for Missing and Lost Persons, and the search for cooperation by various institutions and authorities and the advice of the Argentine Forensic Anthropology Team. Without prejudice to the foregoing, the Commission notes that, from the totality of the information available, it is not a controversial aspect that to date the whereabouts of Facundo José Astudillo Castro remain unknown.

28. In view of the foregoing, taking into account the specific characteristics of the present situation, and in the light of the *prima facie* assessment criterion of the mechanism for protective measures, the Commission considers that Facundo José Astudillo Castro's rights to life and personal integrity are at serious risk, in so far as his fate or whereabouts are not known to date.

29. As regards the requirement of urgency, the Commission considers that it has been met, inasmuch as the passage of time, in these circumstances, is likely to further affect the rights to life and personal integrity of Astudillo Castro. In this regard, more than three months after the disappearance of the proposed beneficiary and approximately two months of investigations, the Commission notes that there is currently no substantial information on his fate or whereabouts.

30. As for the requirement of irreparability, the Commission considers that it has been met, insofar as the possible impairment of the right to life and personal integrity constitutes the maximum situation of irreparability.

31. In view of the foregoing, the Commission considers that it is appropriate to adopt precautionary measures, since the regulatory requirements have been met, in view of the failure to determine the whereabouts of Facundo José Astudillo Castro and the circumstances in which his disappearance reportedly persists to date. The Commission considers it appropriate to reiterate that the State has the obligation to determine the whereabouts of Mr. Astudillo Castro, as well as to clarify the causes of his alleged disappearance and to prosecute and punish all persons who are deemed responsible.

IV. BENEFICIARY

32. The IACtHR declares the beneficiary of this precautionary measure to be Facundo José Astudillo Castro, who is duly identified in the file.

V. DECISION

33. In light of the abovementioned, the IACtHR considers that the present matter meets, *prima facie*, the requirements of seriousness, urgency, and risk of irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that Argentina:

- a) Adopt the necessary measures to determine the situation and whereabouts of Facundo José Astudillo Castro, in order to protect his rights to life and personal integrity. In this regard, the Commission urges the State to guarantee effective search actions through its specialized mechanisms, created for such purposes;
- b) agree on the measures to be adopted with the beneficiary's relatives and representatives; and
- c) implement actions aimed at investigating the facts that motivated the granting of this precautionary measure so as to avoid its reoccurrence.

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

35. 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 on any violation of the rights protected in the American Convention and other applicable human rights instruments.

36. The Commission requests that the Executive Secretariat of the IACHR notify the present resolution to the State of Argentina and to the representatives.

37. Approved on August 1, 2020 by: Joel Hernández García, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; Esmeralda Arosemena de Troitiño, Edgar Stuardo Ralón Orellana and Julissa Mantilla Falcón; members of the IACHR.

Paulo Abrão
Executive Secretary