

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 55/2020**

Precautionary Measure No. 79-10¹

Nineth Montenegro and her family regarding Guatemala

September 21, 2020

Original: Spanish

I. BACKGROUND

1. On March 25, 2010, the Inter-American Commission on Human Rights (IACHR) requested the adoption of precautionary measures in favor of Nineth Montenegro and her family, in Guatemala. The request alleged that the beneficiary, who was a congresswoman at the time, had learned of a plan to attempt against her life. According to the information provided, the International Commission against Impunity in Guatemala (CICIG) offered her security measures; however, the beneficiary expressed a lack of confidence in the security services offered and considered that a more comprehensive security scheme was necessary.

II. INFORMATION PROVIDED DURING THE TIME THE MEASURES HAVE BEEN IN FORCE

2. During the time the precautionary measures have been in force, the Commission has followed up on the situation of these precautionary measures through requests for information from the parties. Likewise, during that time, the State requested the lifting of these measures from 2013 until its last communication, stating that the regulatory requirements are not met.

3. During 2010, the State reported that it has provided protective measures for the beneficiary and her family, which included an armored vehicle and 700.00 GTQ per month for fuel expenses. Likewise, perimeter protection was implemented at the beneficiary's residence, with two security agents who work in shifts plans of 8 days on and 8 days off. Regarding the investigative work, the State indicated a series of procedures carried out by the authorities of the Public Prosecutor's Office (*Ministerio Público*), such as interviews, testimonies and evidence gathering. Subsequently, in May 2015, the State indicated that the beneficiary was at a "medium" level of risk and had not been a victim of events of risk. In view of the foregoing, the National Civil Police (PNC) recommended continuing to provide personal security to the beneficiary for a period of 6 months and then evaluate the situation once again. In 2018, the State reported that it continued providing personalized security to the beneficiary, while highlighting that the beneficiary herself had informed the Head of the Division of Protection of Persons and Security that "she was voluntarily withdrawing from the security services provided by that institution," stating that her current situation had improved. That request was allegedly stressed before the Deputy Inspector of the Police.

4. On another note, during 2010 the representatives indicated that the security measures were being partially fulfilled and that the intimidating acts were more direct.² At that time, the representatives made specific requests for protection,³ and questioned the implementation of protective measures.⁴ In 2014, the

¹In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the debate and deliberation of this matter.

²The representatives highlight that on June 6, 2010, a private vehicle with armed men inside it was at the entrance of the beneficiary's residential neighborhood, setting up surveillance a few meters from her house, fleeing after having activated the alarm bell. Regarding this fact, the State informed in a report of September 9, 2010, that the vehicle and its occupants were identified, establishing that the driver served as security personnel for a person who owns a textile company.

³Perimeter security, allocation of armored vehicle with fuel supply and installation of closed-circuit cameras in the building occupied by the Mutual Support Group (GAM) foundation.

⁴According to the representatives, the beneficiary was assigned an armored vehicle, but without a sufficient supply of fuel and with mechanical damage, which was later replaced by another in good condition, but did not have a sufficient supply of fuel either.

representatives reported that due to an alleged leak of information⁵ on the part of the Secretariat of Peace (SEPAZ), the beneficiary and her relatives were being put at risk, given the extortion and kidnapping problem in the country. Subsequently, in 2015, the representatives stated that the beneficiaries did not have protection, as they did not have personalized security or armored vehicles.

5. On September 20, 2019 the IACHR asked the representatives to submit their observations on the request by the State to lift the precautionary measures, as well as updated information on the situation of risk of the beneficiaries. To date, the Commission does not have the observations of the representatives. Since October 2015, the Commission has not received communications from the representatives, even though they were requested to do so.

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

6. The precautionary measures mechanism is part of the Commission's function of overseeing compliance with the human rights obligations set forth in the Charter of the Organization of American States and, in the case of the Member States that have not yet ratified the American Convention, the Declaration of the Rights and Duties of Man. These general oversight functions are established in Article 18 of the Statute of the IACHR, and the precautionary measures mechanism is described in Article 25 of the Rules of Procedure of the Commission. In accordance with that Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

7. The Inter-American Commission and the Inter-American Court of Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, one being precautionary and the other being protective. As regards the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations while they are being considered by the IACHR. Regarding the process of decision making and, 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.

8. With respect to the foregoing, Article 25.7 of the Commission's Rules of Procedure establishes that "the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions." Article 25.9 establishes that "the Commission shall evaluate periodically, at 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 should evaluate if the serious and urgent situation and the possible generation of irreparable harm, that caused the adoption of the precautionary measures, persist. Likewise, the Commission should consider if new situations that might meet the requirements set forth in Article 25 of the Rules of Procedure have subsequently arisen.

⁵The information is allegedly related to the compensation amounts awarded to the family of Edgar Fernando Garcia, the beneficiary's husband.

9. When analyzing this matter, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present evidence and arguments sufficient to support its request.⁶ In the same way, the representatives of the beneficiaries that want the measure to continue must present evidence of the reasons why.⁷ While the assessment of regulatory requirements when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous evaluation.⁸ In this sense, the burden of proof and argument increases as time goes by and there is no imminent risk.⁹ Similarly, according to Article 25, subparagraph 11, the Commission may lift or review a precautionary measure when the beneficiaries or their representatives unjustifiably fail to provide the Commission with a satisfactory response to the requests made by the State for its implementation.

10. The Commission recalls that these precautionary measures were granted in 2010 considering that the beneficiary was being subject to a possible attempt on her life. She expressed a lack of confidence in the security services that the state authorities were offering her and required a broader security scheme to prevent that an irreparable harm to her and her family's rights came to fruition.

11. The Commission takes note of the proceedings reported by the State through its reports concerning the implementation of this precautionary measure (*vid. supra* para. 3). For their part, the representatives provided observations on the implementation of the precautionary measure (*vid. supra* para. 4). However, the Commission notes that, despite the request for information, the representatives have not provided information regarding the beneficiary's and her family's current situation. Furthermore, the Commission notes that, according to the State, the beneficiary herself has withdrawn from the protective measures before the competent authorities in Guatemala, and this information has not been disproved.

12. In view of the foregoing, taking into account the request to lift, and due to the lack of information for approximately 5 years, the Commission does not have elements sufficient to indicate that the requirements established in Article 25 of its Rules of Procedure have been met. In this regard, considering the exceptional and temporary nature of the mechanism, the Commission deems it appropriate to lift these precautionary measures.

IV. DECISION

13. The Commission decides to lift the precautionary measures granted in favor of Nineth Montenegro.

14. The Commission deems it relevant to recall that, in accordance with Articles 4 and 5 of the American Convention in relation to Article 1.1. of the same instrument, the State of Guatemala has the obligation to respect and guarantee the rights of Nineth Montenegro and her family, regardless of the lifting of these measures.

15. The Commission recalls that this decision does not prevent the Commission from considering a new request for precautionary measures, should it be filed.

16. The Commission instructs the Executive Secretariat of the IACHR to notify the State of Guatemala and the representatives of this resolution.

⁶ I/A Court H.R. Provisional measures regarding Mexico. Order of February 7, 2017, paras. 16 and 17. Available in Spanish at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

17. Approved on September 21, 2020 by: Joel Hernández García, President; Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda Arosemena de Troitiño and Julissa Mantilla Falcón, Commissioners of the IACHR.

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