
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 73/2020**

Precautionary Measure No. 442-12
William Alberto Perez Jerez regarding El Salvador
October 20, 2020
Original: Spanish

I. BACKGROUND INFORMATION

1. On October 1, 2014, the Inter-American Commission on Human Rights (IACHR) requested the adoption of precautionary measures in favor of William Alberto Perez Jerez, in El Salvador. The request alleged that the beneficiary was deprived of his liberty, serving a sentence for the crime of aggravated abduction, and that he reportedly faces a health situation arising from his paraplegic condition, partial blindness and “Devic’s disease or Neuromyelitis Optica,” purportedly without any specialized medical attention nor the necessary support within the penitentiary facility where he is allegedly confined. Having analyzed the submissions of law and fact, the Commission considered that the information showed *prima facie* that the beneficiary was at risk. Consequently, the Commission requested that the State of El Salvador adopt the measures necessary to guarantee the life and personal integrity of the beneficiary, particularly provide the necessary specialized medical attention, taking into consideration the impairment caused by his pathologies and the special support that he currently needs.¹

II. INFORMATION PROVIDED DURING THE TIME THE PRECAUTIONARY MEASURES WERE IN FORCE

2. During the time the precautionary measures were in force, the Commission has followed up on the situation of these precautionary measures, by means of requests for information to the parties. Similarly, both the State and the representatives provided information between 2014 and 2015. Following the report of the State in December 2015, the Commission requested that the representatives submitted their comments in November 2016 and April 2019. Up to this date, the Commission has not received any response from the representatives.

3. According to the information provided by the representatives, during 2014 and 2015 the beneficiary was admitted to the Rosales National Hospital due to a medical complication, and they requested that the State be urged to consider the possibility to extinguish the punishment due to suffering an end-stage incurable disease, upon submitting a request for pardon and not having received any response. It was further claimed that the State has not adopted any specific measures to seek an alternative measure so that the beneficiary is not deprived of his liberty in a penitentiary center. As regards his health condition, the representatives reported that his health has deteriorated, as a consequence of a “wrongly performed clinical procedure” combined with his pre-existent ailment. Furthermore, the beneficiary has purportedly been subjected to threats by other inmates.

4. For its part, the State reported that it has been performing the diligences and operations necessary to safeguard the beneficiary’s rights. It was indicated that in 2014 the Office of the Director General of Prisons was entrusted with the task of adapting a physical space for a better movement of the beneficiary, for him to have minimum conditions, as well as the implementation of a diet in accordance with his health condition and the necessary measures so that he can receive medical treatment

¹ Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC442-12-ES.pdf>

regularly. Subsequently, in 2015, the State referred to the measures implemented to deal with the beneficiary's health issues, specifically on the medical procedures and interventions performed in 2014 and 2015. In this regard, the State assured that the beneficiary is allegedly being transferred to the Rosales National Hospital for follow-up and monitoring, as well as to the Salvadoran Institute of Comprehensive Rehabilitation for his occupational and physical therapy. Furthermore, the authorities in the Ministry of Health and the Ministry of Foreign Relations met with the beneficiary in order to get to know his health condition and the possible solutions for his health requirements. The State provided documentary evidence of medical care measures implemented in favor of the beneficiary.

5. On November 8, 2016 and April 24, 2019, the IACHR requested that the representatives submit their comments regarding the measures implemented by the State, as well as additional information. Since 2015 to this date, the Commission has received no communications from the representatives about events of risk regarding the beneficiary.

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

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

7. The Inter-American Commission and the Inter-American Court on Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. Regarding the protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations that are under the consideration of the IACHR. For the purpose of making a decision, 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" is determined by the provided information, it 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. In regard to the abovementioned, Article 25(7) of the Commission's Rules of Procedure stipulates that "the decisions granting, extending, modifying or lifting precautionary measures shall be adopted through reasoned resolutions." In addition, Article 25(9) provides 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 must assess whether the serious and urgent situation and the possible materialization of an irreparable harm that gave rise to the

adoption of precautionary measures continue to exist. Furthermore, it shall consider whether there are new situations that may comply with the requirements set forth in Article 25 of the Rules of Procedure.

9. The Commission recalls that these precautionary measures were granted bearing in mind that the beneficiary was reportedly deprived of liberty and facing an alleged health situation without having access to specialized care within the penitentiary center in 2014.

10. The Commission takes note of the proceedings reported by the State through its reports regarding the implementation of this precautionary measure (see *supra* para. 4). For their part, the representatives provided observations on the implementation of the precautionary measures (see *supra* para. 3). Nevertheless, the Commission emphasizes that, despite repeated requests since 2016, the representatives have not provided information on the beneficiary's situation. Neither have the representatives provided observations on the medical care that the State indicated has been implementing in favor of the beneficiary. Due to the foregoing, the Commission stresses that approximately 4 years have elapsed without any information from the representatives, and the granted timelines have expired.

11. Regarding the current situation of the beneficiary, the Commission has identified that, according to public information, the Legislative Assembly of El Salvador granted "act of grace" ("*gracia de indulto*") to the beneficiary in 2015.² In this regard, if he is at liberty, the Commission notes that the factual circumstances that motivated the granting of these precautionary measures have changed substantially, and no information has been provided for approximately 5 years that may indicate that the alleged events of risk continue to date.

12. Similarly, the Commission recalls that although the assessment of the procedural requirements when adopting precautionary measures is made from the *prima facie* standard, their maintenance requires a more rigorous evaluation.³ In this sense, the burden of proof and argumentation increases as time passes and there is no imminent risk.⁴ The Inter-American Court has indicated that the passage of a reasonable period of time without threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.⁵

13. Lastly, bearing in mind the change in circumstances and the lack of response from the representatives for approximately 5 years, the Commission does not have concrete information that may allow to determine that Mr. Perez Jerez is currently at serious and urgent risk of irreparable harm to his rights, as established in Article 25 of the Rules of Procedure. In this sense, the Commission deems it appropriate to lift these precautionary measures.

IV. DECISION

14. The Commission has decided to lift the precautionary measures granted to William Alberto Perez Jerez.

² ASAMBLEA EL SALVADOR, pardon is granted in favor of inmate William Alberto Pérez Jerez, for the crime of aggravated abduction, as a not necessary accomplice. Available [in Spanish] at <https://www.asamblea.gob.sv/decretos/details/2120>

³ I/A Court H.R. Provisional measures regarding Mexico. Resolution of February 7, 2017, paras. 16 and 17. Available [in Spanish] at http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf

⁴ *Ibid.*

⁵ *Ibid.*

15. The Commission deems it pertinent to recall that pursuant to Articles 4 and 5 of the American Convention in relation to Article 1.1 of the same instrument, the State of El Salvador is under the obligation to respect and guarantee the rights of William Alberto Perez Jerez, regardless of the lifting of these measures.

16. This decision does not prevent the Commission from assessing a new request for precautionary measures, should it be filed, which will be analyzed under the terms of Article 25 of the Rules of Procedure.

17. The Commission requests that the Executive Secretariat of the IACHR notify this resolution to the State of El Salvador and the beneficiary's representatives.

18. Approved on October 20, 2020 by Antonia Urrejola Noguera, First Vice-President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay; and Esmeralda Arosemena de Troitiño; commissioners of the IACHR.

María Claudia Pulido
Acting Executive Secretary