

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 9/2013**

PRECAUTIONARY MEASURE No. 410-13
Matter of José Luis Zubmaguera Miranda and his family regarding Cuba
November 21, 2013

I. INTRODUCTION

1. On November 14, 2013, the Inter-American Commission on Human Rights (hereinafter "The Commission", "Commission" or "IACHR") received a request for precautionary measures filed by "The Legal Information Center - Cubalex" (hereinafter "the petitioners"), requiring that the Republic of Cuba (hereinafter "Cuba" or "the State") protect the life and integrity of José Luis Zubmaguera Miranda and his family, identified in the request. According to the request, Mr. José Luis Zubmaguera Miranda and his family are being subjected to acts of violence and intimidation as a result of an event involving the excessive use of force by police officers in the context of an investigation into the alleged theft of a bicycle.

2. After analyzing the allegations of fact and law presented by the petitioners, the Commission finds that the available information demonstrates *prima facie* that José Luis Zubmaguera Miranda and his family are in a serious and urgent situation and that their lives and physical integrity are at imminent risk. Consequently, in accordance with Article 25 of the Regulations of the Commission, the Commission requests that Cuba: a) take the necessary measures to protect the life and physical integrity of José Luis Zubmaguera Miranda and his family, b) arrange the measures to be adopted with the beneficiaries and their representatives, and c) report on the actions taken to investigate the facts that led to the adoption of this precautionary measure to avoid repetition.

II. SUMMARY OF ALLEGATIONS BY THE APPLICANTS

3. According to the request for precautionary measures, on October 24, 2013, Jose Luis Zubmaguera Miranda was summoned to the police station in the town of Matanzas, as part of an investigation into the alleged theft of a bicycle. The petitioners indicate that because of Miranda Zubmaguera's refusal to attend, he was arrested by the police. However, the proposed beneficiary evaded state authorities. In this context, on November 8, 2013, four policemen, "dressed as civilians", allegedly broke into Zubmaguera Miranda's in order to take him to the police station. According to the petitioners, the policemen began shooting indiscriminately and Zubmaguera Miranda was hit by seven bullets. Afterwards, the police "kicked" him several times and immediately transferred him to the "Hospital Mario Nuñez". The petitioners allege that some of his relatives and Mr. Iván Hernández Carrillo, beneficiary of precautionary measures, witnessed these events.

4. According to the petitioners, it was not until November 11, 2013, that the medical staff of the "Hospital Mario Nuñez" were able to extract four bullets from the abdominal region of the proposed beneficiary, after he presented with a fever due to an infection. Currently, Miranda Zubmaguera is breathing through artificial life support and feeding through an I.V. tube. The proposed beneficiary's family claims that the medical staff did not provide access to any medical certificate or records, alleging that such information "is confidential". In this regard, the petitioners state that it is "mandatory for physicians to report through medical certificates [...] and reports [...] to state authorities" about what happened to the proposed beneficiary.

5. The petitioners contend that, despite having reported the situation to the relevant authorities and being given the names of the four security agents allegedly involved, state authorities did not initiate any judicial process and that the agents at liberty. In this context, the petitioners state that "State security agents harassed the family to keep them quiet." The family proceeded to denounce these acts of intimidation and reiterated their request regarding the reasons "why [the officers] were free after what they did." They claim that the Colonel of the police station reportedly received the complaint and was quoted as saying that "no one knew which agents had fired the shots."

6. In the words of the petitioners, "[w]hile the health of Jose Luis Zubmaguera Miranda deteriorates every day and taking into account that his arrest was carried out in violation of the procedures [...] the danger to his life is imminent." "The precautionary measures were requested to ensure the life and physical integrity of José Luis Zubmaguera Miranda and his family."

III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY AND IRREPARABILITY

7. The mechanism of precautionary measures is a part of the Commission's function of overseeing Member State 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 41 (b) of the American Convention on Human Rights, and Article 18 of the Commission's Statute. The mechanism of precautionary measures is set out 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.

8. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that precautionary and provisional measures have a dual nature, precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation being considered by the IACHR. Their 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 useful purpose (*effet utile*) of the final decision. In this regard, precautionary measures or provisional measures thus enable the State concerned to fulfill the final decision and, if necessary, to comply with the reparations ordered. As such, for the purposes of making a decision, and in accordance with Article 25.2 of its 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.

9. In the present situation, the Commission considers that the requirement of seriousness is met, given the tenor of the events involving Jose Luis Zubmaguera Miranda on November 8, 2013, and the alleged acts of harassment suffered by his relatives because of their claim regarding the excessive use of force by the police. In this scenario, taking into account the information provided, considered as a whole, and in light of the *prima facie* examination appropriate to the mechanism of precautionary measures, the Commission considers that the lives and physical integrity of José Luis Zubmaguera Miranda and his family are at risk.

10. Regarding the requirement of urgency, the Commission believes that it has been fulfilled, given that the risk might increase over time due to the claims filed by Zubmaguera Miranda's family, as witnesses. In this regard, despite having informed the competent authorities of the acts of intimidation by the police, no measures have been implemented to protect their rights.

11. The Commission considers that the requirement of irreparable harm is fulfilled, to the extent that the risk to life and physical integrity presents the highest irreparable situation.

12. Under Article 25.5, the Commission normally requests information from the State before taking a decision on a request for precautionary measures, except in matters as in the present situation where the immediacy of the potential harm does not permit delays.

IV. BENEFICIARIES

13. The request was submitted on behalf of José Luis Zugmaguera Miranda and his family, who are identified in the documents produced.

V. DECISION

14. In view of the above-mentioned information, the Commission considers that this matter *prima facie* meets the requirements of gravity, urgency and irreparable harm contained in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the Government of Cuba:

a) adopt all necessary measures to protect the life and physical integrity of José Luis Zugmaguera Miranda and his family;

b) agree on the measures to be adopted with the beneficiaries and their representatives; and,

c) report on the actions taken to investigate the facts that gave rise to the adoption of this precautionary measure in order to prevent its repetition.

15. The Commission also requests the Government of Cuba 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.

16. 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 Declaration of the Rights and Duties of Man or other applicable instruments.

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

18. Approved on the 21 day of November, 2013 by: Jesús Orozco, President; Tracy Robinson, First Vice President; Rosa Maria Ortiz, Second Vice President; Commissioners Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Belle Antoine.