



**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 92/2021**

Precautionary Measure No. 406-09

Gregorio Ulises Sarmiento Galindo and family regarding Honduras

November 19, 2021

Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACtHR) decides to lift these precautionary measures in favor of Gregorio Ulises Sarmiento Galindo and his family. At the time of making the decision, the Commission evaluated the actions taken by the State during implementation. Following the request to lift the measures filed by the State and having learned about the death of the beneficiary through the media, the IACtHR requested observations from the State and the beneficiary's representation. The State confirmed the death. Upon not having information from the representation during the time these precautionary measures were in force, and the beneficiary having died, the Commission considers that the requirements of Article 25 of the Rules of Procedure are no longer met.

II. BACKGROUND INFORMATION

2. On November 30, 2009, the IACtHR granted precautionary measures in favor of Gregorio Ulises Sarmiento Galindo and his family. According to the information, Mr. Sarmiento Galindo was an active member of the National Resistance Against the Coup d'état. It was alleged that on November 18, 2009, José Manuel Beltrán and Delis Noel Hernández Figueroa were waiting for Mr. Sarmiento Galindo outside the house when about eight people fired from a car causing the death of both. It was noted that the people allegedly fired weapons and grenades at the doors and windows of the house, damaging furniture and interior structures. The information received indicated that the attackers entered the house and kicked Mr. Sarmiento Galindo, and that the grenadier rifles utilized are of use by the Honduran Armed Forces. The request indicated that the National Police, headquartered about five blocks from the house, arrived 40 minutes after the attack began. It was added that the authorities allegedly did not investigate the events with due diligence and that the security forces reportedly did not provide security to Mr. Sarmiento and his family. The Inter-American Commission requested that the State: (i) adopt the necessary measures to guarantee the life and personal integrity of Gregorio Ulises Sarmiento Galindo and his family; (ii) agree upon the measures to be adopted with the beneficiary and his representatives; and (iii) report on the actions taken to investigate the events that led to the adoption of these measures.¹

III. INFORMATION PROVIDED DURING THE TIME THE MEASURES WERE IN FORCE

3. Throughout the time the precautionary measures have been in force, the Commission has followed-up on the situation that is the subject matter of these measures through the request for information from the parties. On September 12, 2013, the State presented a report. On October 9, 2014, the Commission asked the representation to present updated information. On July 29, 2015, the Commission asked the parties to provide updated information. After requesting a time extension, on December 16, 2015, the State furnished its report. On July 26, 2016, the Commission forwarded the State's

¹ IACtHR. Precautionary measures granted by the IACtHR during 2009. Available [in Spanish] at <http://www.cidh.org/medidas/2009.sp.htm>



response for observations from the representation. On August 28, 2020, the State requested the lifting of the precautionary measures.

4. On January 13, 2021, the Commission asked the parties to provide updated information. In particular, they were asked to comment on the public information that indicated that the beneficiary had died in December 2020. On January 26, 2021, the State requested a timeline extension, which was granted on January 28, 2021. On February 12, 2021, the State issued a response.

5. Following the creation of the PM-406-09-HO registry, the representation has not sent a response to the IACHR regarding the situation of the beneficiary or his next of kin.

A. Information provided by the State

6. On September 12, 2013, the State reported that: (i) on December 23, 2009, a consultation meeting was held in which it was agreed that patrols would be carried out around the beneficiary and his nuclear family's home, and that there would be police support to the beneficiary and his family members when they leave the city, allowing their security personnel to carry weapons; (ii) on April 2, 2013, the Office of the Special Prosecutor for Human Rights requested compliance with and continuity of the precautionary measures, after the beneficiary denounced police officers for the crimes of abuse of authority, illegal detention, and threats; (iii) on April 16, 2013, the Director General of the Honduran National Police was instructed to continue with compliance with the precautionary measures; and (iv) a working visit is being scheduled to hold a consultation meeting with the beneficiary and to verify *in situ* the current status and compliance with the precautionary measures.

7. On December 16, 2015, the State presented a report stating that: (i) the last consultation and monitoring meeting was held on September 30, 2013; and (ii) the beneficiary is not being provided with material security measures since he was outside the country.

8. Finally, on August 28, 2020, the State requested the lifting of the precautionary measures due to "procedural inactivity." On February 12, 2021, the State contacted the Commission to inform that the beneficiary died on December 7, 2020.

B. Information provided by the representation

9. The representation has not responded to the requests for information made by the Commission nor has it provided the observations requested.

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

10. 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 this Article, the Commission grants precautionary measures in serious and urgent situations in which these measures are necessary to avoid an irreparable harm to persons.

11. The Inter-American Commission and the Inter-American Court of Human Rights have repeatedly established that the precautionary and provisional measures have a double nature, one precautionary and the other protective. As regards the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, these measures have the purpose of preserving legal situations while they are under consideration by the IACtHR. 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 impact on rights which, due to their nature, would not be susceptible to reparation, restoration, or adequate compensation.

12. With respect to the foregoing, Article 25(7) of the Commission’s Rules of Procedure establishes that “[t]he 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 assess whether the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures still persist. Moreover, 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.

13. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures requires a more rigorous evaluation.² In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.³ The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.⁴

14. In this matter, the Commission recalls that the precautionary measures were granted in 2009 in light of the available information, which indicated that the beneficiary was the target of threats and harassment due to his role as an active member of the National Resistance Against the Coup d'état. Upon the granting of the precautionary measures and throughout the follow-up by the Commission, the State sent reports referring in detail to the actions taken to ensure the life and integrity of the beneficiary and his family, as well as the consultation actions undertaken in favor of them. Among them, the Commission observes that the State held: (i) at least two consultation meetings; (ii) patrols to the domicile of the beneficiary and his nuclear family; (iii) police support when the beneficiary left his city.

15. Later, in 2020, the IACtHR learned, through public information, that the beneficiary had died in December 2020. The State confirmed this situation. After requesting information from the representation, the latter did not respond, so there are no additional details beyond what was indicated by the State. The

² 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

³ Ibid.

⁴ Ibid.

public information available does not provide details on the death of the beneficiary, except that he was over 70 years old and had left the country.⁵

16. The Commission observes that in the case file it is not possible to identify any type of information on the part of the representation while this matter was in force. The foregoing has been so despite the requests for information made by the IACtHR over time. In this regard, the Commission recalls that the representatives of the beneficiaries who wish the measures to continue must present proof of reasons for doing so.⁶ Similarly, Article 25 subparagraph 11 of the Rules of Procedure sets forth that 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. As already indicated, in this matter, the Commission notes that the representation has not responded to the requests for information made by the IACtHR.

17. Taking into account the analysis carried out, and considering the death of the beneficiary, the Commission understands that the factual circumstances that motivated the granting of these precautionary measures have changed significantly. Thus, the Commission deems, that according to the available information, it is not possible to currently identify any situation that fulfills the requirements of Article 25 of the Rules of Procedure, since approximately more than 12 years have gone by with no information from the representation. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures,⁷ the Commission deems it appropriate to lift these precautionary measures.

V. DECISION

18. The Commission decides to lift the precautionary measures granted in favor of Gregorio Ulises Sarmiento Galindo and his family, in Honduras.

19. The Commission emphasizes that regardless of the lifting of these measures, in accordance with Article 1(1) of the American Convention, it is the obligation of the State of Honduras to respect and guarantee the rights recognized therein.

20. The Commission instructs its Executive Secretariat to notify this resolution to the State of Honduras and to the representation.

21. Approved on November 19, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay; Joel Hernández García; and Edgar Stuardo Ralón Orellana, members of the IACtHR.

⁵ Inter alia: DEFENSORES EN LINEA, COFADEH joins the mourning for the death of Ulises Sarmiento, December 7, 2020. Available [in Spanish] at <https://www.defensoresenlinea.com/cofadeh-se-une-al-duelo-por-el-deceso-de-ulises-sarmiento/>

⁶ Ibid.

⁷ I/A Court H.R., Matter of Adrián Meléndez Quijano *et al.* Provisional Measures regarding El Salvador. Order of the Court of August 21, 2013, para. 22, and Matter of Galdámez Álvarez *et al.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of November 23, 2016, para. 24.