

---

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 97/2021**

Precautionary Measure No. 998-20  
José Humberto Hernández Rodríguez regarding Venezuela  
December 1, 2021  
Original: Spanish

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of José Humberto Hernández Rodríguez. At the time of making this decision, the Commission took into account that the precautionary measures were rendered moot following the beneficiary's death. The IACHR decided to lift these measures and considered as serious the lack of response from the State regarding the specific measures adopted to implement these measures while they were in place.

**II. BACKGROUND INFORMATION**

2. On January 28, 2021, the IACHR granted precautionary measures to José Humberto Hernández Rodríguez, who was deprived of his liberty under pretrial detention by a court order in the Fénix prison in the state of Lara, and it was alleged that he was not receiving the prescribed medical care for his health situation. Upon analyzing the submissions of fact and law provided by the applicants, the Commission considered that, from the applicable *prima facie* standard, the beneficiary was in a serious and urgent situation, given that his rights to life, personal integrity, and health were reportedly at risk of irreparable harm. Consequently, the Commission requested that the State of Venezuela: a) adopt the necessary measures to protect the rights to life, personal integrity, and health of Mr. José Humberto Hernández Rodríguez. In particular, the State must ensure that he has access to the medical treatment prescribed by the competent authorities; b) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and c) implement the actions aimed at investigating the events that led to the granting of the precautionary measure, so as to prevent them from reoccurring.<sup>1</sup>

**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 of information from the parties. On January 28 and March 24, 2021, the beneficiary's representation submitted a report.

4. On January 28, 2021, the representation stated that on January 22, 2021, the beneficiary was transferred to a hospital for a chest X-ray. It was found that the beneficiary had a pleural effusion, pneumonia, and calcification of the aorta, and therefore, he should be treated immediately. However, medical care was denied until the beneficiary underwent a test to rule out possible COVID-19 contamination. As neither the hospital nor the detention facility carry out this test, the beneficiary was transferred to the Felix Prison without having received the necessary medical treatment. Similarly, they stated that humanitarian measures and house arrests have been granted as a result of the pandemic, but

---

<sup>1</sup> IACHR. [Resolution 8/2021. Precautionary Measure No. 998-20. José Humberto Hernández Rodríguez regarding Venezuela](#). January 28, 2021.

that the beneficiary did not have access to them because the state authorities had lost Mr. Hernández's administrative file. On March 24, 2021, the representation contacted the Commission to report the beneficiary's death on March 23, 2021, while waiting for medical care to be provided. The representation indicated that the precautionary measures were not implemented.

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

5. 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 irreparable harm to persons.

6. 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, both precautionary and protective. Regarding their 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 IACHR. In the process of reaching a decision, 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 of 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.

7. With respect to the foregoing, Article 25(7) of the Commission's Rules of Procedure establish that "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.

8. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, the maintenance of such measures requires a more rigorous evaluation.<sup>2</sup> In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.<sup>3</sup> The Inter-American Court has indicated that the passage of a reasonable period of

<sup>2</sup> 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](http://www.corteidh.or.cr/docs/medidas/fernandez_se_08.pdf)

<sup>3</sup> Ibid.

time without any threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.<sup>4</sup>

9. In this matter, the Commission recalls that the precautionary measures were granted in 2021 in light of the available information, which indicated that the beneficiary was deprived of his liberty and facing a risk because he was not receiving the medical care prescribed for his health situation.<sup>5</sup> Following the granting, the Commission observes that the representation reported on the beneficiary's death on March 23, 2021. In this regard, on April 1, 2021, the Commission regretted the beneficiary's death.<sup>6</sup> As assessed at that time, the Commission indicated that no information was received indicating that the country's national institutions have adopted suitable and effective actions to implement the requests made by the Commission. On the contrary, the representation reported that no measures have been taken to implement them.

10. Based on the foregoing, the IACHR notes that the circumstances that led to the granting of these precautionary measures have changed as the beneficiary's death has been confirmed, and the requirements of seriousness, urgency, and need to prevent irreparable harm are not met. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures,<sup>7</sup> the Commission deems it appropriate to lift these precautionary measures.

## **V. DECISION**

11. The Commission decides to lift the precautionary measures granted to José Humberto Hernández Rodríguez, in Venezuela.

12. 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 Venezuela to respect and guarantee the rights recognized therein.

13. The Commission instructs the Executive Secretariat to notify this resolution to the State of Venezuela and to the representation.

14. Approved December 1, 2021, by: Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay; Esmeralda Arosemena de Troitiño; Joel Hernández García; and Edgar Stuardo Ralón Orellana, members of the IACHR.

Marisol Blanchard  
Assistant Executive Secretary

<sup>4</sup> Ibid.

<sup>5</sup> The precautionary measures were granted in view of the nature of the facts described by the applicants. The Commission recalls the Inter-American Convention to Prevent and Punish Torture, to which the State of Venezuela is a party since its ratification on August 26, 1991.

<sup>6</sup> IACHR, [IACHR Regrets the Death of Two Beneficiaries of Precautionary Measures in Venezuela and Calls on the State to Implement All Precautionary Measures to Prevent the Risks it Has Identified from Becoming a Reality](#), April 1, 2021.

<sup>7</sup> 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