
**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 29/2022**

Precautionary Measure No. 286-19
C.F.M.T. regarding the Dominican Republic
July 4, 2022
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures granted to C.F.M.T. while he was deprived of his liberty in the Dominican Republic. At the time of making the decision, the Commission assessed the actions taken by the State during implementation as well as the observations of the beneficiary's representatives. Following the State's request to have the measures lifted, the IACHR requested information from the representatives, who confirmed that C.F.M.T. had been released. Upon not finding compliance with the procedural requirements and in view of the change in circumstances that led to the granting of the precautionary measures, the IACHR decided to lift these measures.

II. BACKGROUND INFORMATION

2. On April 10, 2019, the IACHR granted precautionary measures in favor of C.F.M.T., a young man deprived of liberty in the La Victoria Penitentiary, where he was allegedly subjected to sexual assault. Upon analyzing the submissions of fact and law furnished by the applicants, the Commission considered that the information provided showed *prima facie* that C.F.M.T. was in a serious and urgent situation given that his rights to life and personal integrity were at risk of irreparable harm. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission requested that the State: a) adopt the necessary measures to preserve the life, physical integrity, and health of the beneficiary; b) provide C.F.M.T. with adequate medical care in accordance with the applicable international standards for victims of sexual violence; and c) report on the actions aimed at investigating the facts that led to the adoption of this precautionary measure, so as to prevent them from reoccurring.

3. Representatives is exercised by the Caribbean Vulnerable Communities Coalition (CVC), *Fundación Sigue Mis Pasos*, and Robert F. Kennedy Human Rights.

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

4. During the time the precautionary measures were in force, the Commission followed-up on the situation that is the subject matter of these precautionary measures. On May 30, 2019, the representatives submitted a report. On May 31, 2019, the Commission requested information from the State. On October 11, 2019, the Commission called the parties to a working meeting, which was held on November 13, 2019. On November 18, 2019, the State submitted a report requesting the lifting of the precautionary measures. On November 21, 2019, the Commission forwarded the State's report to the representatives. On December 20, 2019, the representatives submitted their report. On April 13, 2020, the Commission forwarded to the State the representatives' communication. On September 23, 2020, the representatives submitted their report, as well as on December 18, 2020. On March 21, 2022, the Commission requested the parties to provide additional information they considered relevant. The representatives submitted information on

April 18, 2022, after having been granted a timeline extension. The State submitted a response on April 29, 2022.

A. Information provided by the State

5. The State considered that it had complied with the Commission's recommendations. On November 18, 2019, the State submitted a report in which it stated that: (i) on March 19, 2019, the beneficiary was transferred to the *Veterano II* sector, where the beneficiary stated that he was more comfortable; (ii) on April 1, 2019, a communication was issued to the Coordinator of the Gender-Based Violence Unit of the Province of Santo Domingo Este to investigate the alleged sexual assault against C.F.M.T.; (iii) on April 1, 2019, a communication was issued to the director of the New Prison Management Model (*Nuevo Modelo de Gestión Penitenciaria*) to accept the request for the transfer of C.F.M.T. to the Correction and Rehabilitation Center of San Pedro de Macorís. Similarly, a communication was sent to the Director General of Prisons so that the beneficiary is provided with medical care and is placed in a safe and adequate place; (iv) on April 15, 2019, the Director of the Human Rights Unit of the Attorney General's Office went to the La Victoria prison to learn about the beneficiary's health status. The beneficiary reportedly reported that his aggressor was transferred and could not attempt against his physical integrity; and (v) on October 29, 2019, the beneficiary was evaluated by Dr. D.N., who found that the patient did not have any disease and referred him to psychology. The State requested that the precautionary measures be lifted as it had taken the necessary steps to guarantee the beneficiary's rights.

6. On April 29, 2022, the State reaffirmed that the conditions that gave rise to the precautionary measures no longer exist. It was indicated that the beneficiary is at liberty following a judgment by default issued by the First Collegiate Court of the Chamber of the Court of First Instance of the National District of Santo Domingo. The State recalled the measures taken while the beneficiary was deprived of his liberty. Moreover, it was indicated that on July 29, 2020, the termination of the pretrial detention was ordered, imposing instead a financial guarantee. On January 19, 2021, the beneficiary was tried by default after the Court had exhausted all relevant channels by summoning him to the address provided by the technical defense and for changing address without having notified the Court of his reasons and his new address.

7. The State reported that on April 8, 2022, the Director of the Human Rights Department of the Public Ministry, Mag. Danissa Cruz, met with the representatives. The Coordinator of the Gender-Based Violence Unit of the Province of Santo Domingo Este was also present. The parties reportedly agreed to the following: a) Support the beneficiary in obtaining the document stating that he does not have a criminal record, in order to support his social reintegration; b) Enroll him in the Subsidized Senasa in order to receive proper medical attention, which was requested; c) Refer the beneficiary to the Behavioral Intervention Center for Men, which was also requested; and d) Wait for a response on the follow-up of the case of sexual abuse of the beneficiary. On April 22, 2022, the Directorate General of Penitentiary and Correctional Services issued a certification whereby the release of the beneficiary was recorded. On April 25, 2022, through the Human Rights Department of the Public Prosecutor's Office, the beneficiary's certificate of no criminal record was issued. It was indicated that the beneficiary's response regarding his desire to continue with his case of sexual violence was pending, and that the Coordinator of the Gender-Based Violence Unit of the Province of Santo Domingo Este is willing to continue with the case. Lastly, the State suggested that the representatives bring the beneficiary before the Court as soon as possible to lift the judgment by default.

B. Information provided by the representatives

8. The representatives questioned the implementation of the precautionary measures by the State. On May 30, 2019, the representatives stated that the beneficiary had been in pretrial detention for 3 months, suffering inhumane conditions that threaten his life and health. They stated that: (i) the beneficiary receives threats from the prison guards, on several occasions the guards have broken his personal belongings and have undressed the beneficiary in front of other inmates; (ii) the beneficiary has been frequently a victim of robberies inside the prison; (iii) the beneficiary depended entirely on the representatives to have a bed and access to food, water, and personal hygiene items; (iv) on April 23, 2019, C.F.M.T. was reportedly examined by a physician who found that he was below his ideal weight and suffering from anemia; and he was reportedly referred to a psychological consultation but was unable to attend due to the large number of people waiting; and (v) the beneficiary reportedly missed two hearings held as part of the proceedings, attributing the responsibility to the prison guards.

9. On December 20, 2019, the representatives stated that the beneficiary spent nine months in pretrial detention in contravention of the provisions of the Code of Criminal Procedure and denounced lack of due process. It was reported that: (i) the authorities exerted pressure on the beneficiary with the possibility of obtaining his release if he withdrew the complaint about the facts that gave rise to the precautionary measures and affirmed that his complaint was false; (ii) on October 30, 2019, the beneficiary was transferred to the San Pedro Correctional and Rehabilitation Center; (iii) the beneficiary feared that he would be, once again, the victim of a sexual assault, as he was subject to threats and sexual proposals by other persons deprived of liberty in the Center; (iv) the conditions of detention at the San Pedro Correctional and Rehabilitation Center had reportedly improved, but it was still difficult for the beneficiary to obtain personal hygiene tools, and they reported that food was provided by the Correctional Center but that the beneficiary was thinner; and (v) on December 17, 2019, the beneficiary had access to a psychological appointment.

10. On September 23, 2020, the representatives stated that: (i) on July 29, 2020, the judge granted the beneficiary release on bail. The payment was made on August 11, 2020; (ii) conditions at the Center were allegedly degraded due to the COVID-19 pandemic; and (iii) on June 15, 2020, the beneficiary was allegedly assaulted by another inmate. On December 18, 2020, the representatives manifested that the beneficiary was released from prison on December 8, 2020. However, the representatives considered that the risk continued due to the physical and mental health of the beneficiary and the ongoing criminal proceedings against him.

11. On April 18, 2022, the representatives reported that: (i) Gesell's tests had not been performed on C.F.M.T. or on the children who allegedly were victims of sexual assault by the beneficiary, presenting other procedural questions; (ii) on January 19, 2021, a review hearing of the case was held, where the woman pastor who accused the beneficiary stated that she is not interested in continuing with the case and that she would be willing to make a written withdrawal if C.F.M.T. does not mention her name again in social networks; (iii) on February 3, 2021, a hearing was held in which the beneficiary was tried by default for his absence to sign during the months he should have been released, even though he was in prison; (iv) the reinsertion process has been difficult for the beneficiary since he has difficulty in obtaining a job because he cannot obtain a certificate of No Criminal Record; and (v) on April 5, 2022, a meeting was held with the Human Rights Prosecutor, Mag. Danissa Cruz, in which she pledged to support the beneficiary in obtaining the certificate of no criminal record, to enroll him in health insurance and refer him to the psychological care and mental health center, to support him in the event that he decides to report the act of sexual violence that he suffered in the La Victoria prison.

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

12. 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 Commission's Rules of Procedure. 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.

13. The Inter-American Commission and the Inter-American Court of Human Rights have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary. 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, 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.

14. 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) sets forth 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 if the serious and urgent situation and possible irreparable harm that caused the adoption of the precautionary measures persist. Moreover, the Commission shall consider whether new situations have subsequently arisen that might meet the requirements set forth in Article 25 of the Rules of Procedure.

15. Similarly, while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard, keeping such measures in force requires a more rigorous evaluation.¹ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.² The Inter-American Court has indicated that the passage of a reasonable period of time without any threats or intimidation, in addition to the lack of imminent risk, may lead to the international protection measures being lifted.³

16. When the precautionary measures were granted in 2019, the Commission was informed that C.F.M.T. was deprived of his liberty under pretrial detention in the framework of a criminal proceeding

¹ 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

² Ibid.

³ Ibid.

for the crime of sexual abuse.⁴ In the context of his conditions of detention, it was alleged that C.F.M.T. was sexually assaulted at the La Victoria penitentiary, although there was no information on medical care provided or measures taken against the alleged perpetrators of the assault.⁵

17. Following the granting of precautionary measures, the Commission received information from the parties. Upon analyzing the information provided by the parties, the Commission understands that the following measures were implemented in favor of C.F.M.T. during the time these precautionary measures were in force:

- I. While he was deprived of his liberty until December 2020:
 - a. Transfer of the beneficiary to a more comfortable sector. Subsequently, the request to transfer the beneficiary to another prison in 2019, such as the San Pedro Correctional and Rehabilitation Center, was granted (see *supra* paras. 5 and 9).
 - b. The representatives confirmed that the conditions of detention at the San Pedro Correctional and Rehabilitation Center had improved (see *supra* para. 9).
 - c. Transfer of the alleged aggressor to prevent him from assaulting the beneficiary (see *supra* para. 5).
 - d. Medical care for the beneficiary, being referred to psychology, after a session with medical personnel and awareness by the Attorney General's Office (see *supra* paras. 5 and 8).
 - e. Investigation into the alleged sexual assault suffered by the beneficiary (see *supra* para. 5).
- II. Following his release after December 2020:
 - a. The judicial authorities evaluated the proposed beneficiary's pre-trial detention and in 2020 ordered its termination after imposing a financial guarantee (see *supra* para. 6).
 - b. Meeting in April 2022 with the Public Prosecutor's Office and the Coordinator of the Gender-Based Violence Unit of the Province of Santo Domingo together with the representatives, where certain agreements were reached, which include support in certain procedures, enrollment in health insurance and referral to mental and psychological health care, as well as support in the case of his complaint of rape (see *supra* para. 7).
 - c. In April 2022, the beneficiary's certificate of no criminal record was completed, this being one of the agreements for the purposes of his social reintegration (see *supra* paras. 7 and 11).
 - d. The Coordinator of the Gender-Based Violence Unit of the Province of Santo Domingo indicated that she was willing to continue with the case of sexual violence if that was the beneficiary's wish (see *supra* para. 7).
 - e. While the beneficiary was in "default" before the judicial authorities following the summonses made in the proceeding, the State urged the representatives to bring the beneficiary before the judicial authorities to lift the judgment by "default" (see *supra* paras. 6 and 7).

18. Furthermore, the Commission notes that the State has requested the lifting of the precautionary measures since November 18, 2019. In this regard, the request for lifting was transferred to the representatives under the terms of Article 25(9). Additionally, the Commission recalls that when a State requests the lifting of a precautionary measure, it must present sufficient evidence and arguments to

⁴ IACHR, [Resolution 20/2019, Precautionary Measure No. 286-19, C.F.M.T. regarding the Dominican Republic](#), April 10, 2019, para. 4.

⁵ IACHR, [Resolution 20/2019, Precautionary Measure No. 286-19, C.F.M.T. regarding the Dominican Republic](#), April 10, 2019, para. 16.

support such a request.⁶ By the same token, the representatives of the beneficiaries that want the measures to continue must present evidence of any reasons why.⁷

19. After analyzing the responses received from the representatives, the Commission understands that it is not a matter of dispute that the beneficiary is not currently deprived of his liberty under the same conditions that were assessed at the time of granting the precautionary measures in 2019. In this regard, the Commission considers that it is not possible to compare the beneficiary's current situation with that assessed in 2019. The Commission also does not identify elements that indicate that the beneficiary is at imminent risk after December 2020, when he was released.

20. The available information shows that the beneficiary was tried by default in January 2021 and remains to be classified as in "default" approximately 18 months after having been released. At this time, it is not for the Commission to rule on the allegations of due process. In this regard, the Commission recalls that it is up to the State to continue with the investigations that are deemed relevant in the terms of Articles 8 and 25 of the Convention and in light of the applicable standards. With regard to the allegations on the issue of health, the Commission understands that the State has been facilitating that the beneficiary be provided with the corresponding care. Although there are no elements to construe that there is a situation posing an imminent risk to his health, the Commission calls on the State to continue with the health care it has been providing within the framework of the applicable international obligations.

21. Considering the analysis carried out, and in view of the State's request to have the measures lifted, the Commission understands that the factual circumstances that led to the granting of these precautionary measures have changed significantly due to the release of the beneficiary and the measures adopted by the State. In this regard, the Commission considers that, according to the information available, at present, the situation does not meet the requirements of Article 25 of the Rules of Procedure. In view of the above and taking into account the exceptional and temporary nature of precautionary measures,⁸ the Commission deems it appropriate to lift these measures.

V. DECISION

22. The Commission decides to lift the precautionary measures granted in favor of C.F.M.T., in the Dominican Republic.

23. 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 the Dominican Republic to respect and guarantee the rights recognized therein, including the life and personal integrity of C.F.M.T.

24. The Commission recalls that the lifting of these measures does not prevent the representatives from filing a new request for precautionary measures should they consider that there is a situation that meets the requirements established in Article 25 of the Rules of Procedure.

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 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

25. The Commission instructs its Executive Secretariat to notify this Resolution to the State of the Dominican Republic and to the representatives.

26. Approved on July 4, 2022, by Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice-President; Esmeralda Arosemena de Troitiño; Roberta Clarke; and Carlos Bernal Pulido, members of the IACHR.

Mario López-Garelli
By authorization of the Executive Secretary