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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
RESOLUTION 68/2023**

Precautionary Measure No. 347-21  
J.C.Z.R. regarding Argentina  
November 20, 2023  
Original: Spanish

**I. INTRODUCTION**

1. On April 21, 2021, the Inter-American Commission on Human Rights (“the Inter-American Commission”, “the Commission” or “the IACHR”) received a request for precautionary measures filed by *Comisión Provincial por la Memoria* (“the applicant”) urging the Commission to require that the State of Argentina (“the State” or “Argentina”) adopt the necessary measures to protect the rights of J.C.Z.R. (the “proposed beneficiary”), who allegedly faced a risk to his health, life, and personal integrity while being deprived of his liberty. According to the request, the proposed beneficiary, who was sentenced to custodial sentence, has medical issues such as a right facio-brachio-crural hemiplegia, dysarthria, and convulsions yet does not receive timely and adequate medical care. In addition, he is reportedly held in detention conditions that are inadequate given his health issues and disability.

2. Pursuant to Article 25 of its Rules of Procedure, the IACHR requested additional information from the applicant on May 4, 2021, and received a response on May 10, 2021. Subsequently, on July 2, 2021, the Commission requested information from the State, which submitted a report on July 8, 2021. The State provided information again on October 27, 2021, August 19, 2022, and August 4, 2023. For its part, the applicant submitted information on September 16 and October 25, 2021; July 5 and September 8, 2022; and August 4 and 30, 2023.

3. Upon analyzing the submissions of fact and law furnished by the parties, the Commission considers that the information presented shows *prima facie* that J.C.Z.R. is in a serious and urgent situation, given that his rights to health, life, and personal integrity are at risk of irreparable harm. Therefore, the IACHR requests that Argentina: a) adopt the necessary measures to protect the rights of Mr. J.C.Z.R. to life, personal integrity, and health. In particular, provide him with the required medical treatment in a timely and appropriate manner, and ensure that the detention conditions are in line with applicable international standards, so as to fulfill the treatment he requires due to his health issues and the needs arising from his disability; b) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and c) report on the actions undertaken to investigate the alleged events that led to the adoption of this precautionary measure, so as to prevent them from reoccurring.

**II. SUMMARY OF FACTS AND ARGUMENTS PROVIDED BY THE PARTIES**

**A. Information provided by the applicants**

4. The proposed beneficiary J.C.Z.R. is deprived of his liberty with a final ruling for the crime of aggravated homicide until January 22, 2032. According to the applicant, due to the lack of medical attention, in December 2019, the proposed beneficiary had a stroke. The sequelae were right facio-brachio-crural hemiplegia, dysarthria, and convulsions which allegedly cause seizures followed by fainting with loss of consciousness. Mr. J.C.Z.R. uses a wheelchair and reportedly relies on the support of his cellmate for everyday tasks. On January 29, 2021, after numerous requests, the proposed beneficiary was transferred to the Penitentiary-Hospital Unit No. 22 Lisandro Olmos.

5. In this context, the applicant indicated that the health issues that the proposed beneficiary experiences have been increasing over time. It was indicated that “following each crisis, the medical response is only pharmacological, since the Penitentiary Unit No. 22 cannot guarantee his right to adequate health and treatment.” Moreover, the director of the Penitentiary Unit No. 22 presented the case of Mr. J.C.Z.R. before the competent court on March 25 and 30, 2021 and requested the consideration of alternative measures to prison. In this presentation, he allegedly included a medical report with observations and indicated that, according to the evaluation carried out by the Admission and Monitoring Group of Penitentiary Unit Nr. 22, the possibility of granting Home Detention with Electronic Monitoring is considered relevant. At the time of filing the request, the applicant indicated that there were, in total, 19 judicial presentations made to the Court enforcing the ruling with the purpose of reverting the exacerbation of the detention conditions, demanding that Mr. Z.R.’s rights be guaranteed, and ensuring he is provided medical care outside the prison to halt the deterioration of his health.

6. The applicant provided a copy of a medical report dated January 2021 that stated the following:

Observations: patient had a hemorrhagic stroke in 2019. Admitted to this hospital unit under follow-up by the neurology service. Since his admission to the hospital, he has suffered several seizures with multiple traumatismos due to them, from which he has recovered with emergency medical treatment. Adjustment of antiseizure treatment has been carried out, but an adequate response has not been achieved. His seizures are becoming more frequent, at least twice a week despite receiving all the corresponding medication. It is noted that the confinement environment is not suitable for the recovery of his condition due to the need to carry out rehabilitation activities as early as possible and in a suitable physical place. In addition, it puts his physical integrity at risk.

7. It was indicated that on March 3, 2021, a socio-environmental report was made regarding the situation of Mr. J.C.Z.R. in which it was concluded that “the address provided is inadequate for house arrest”. Furthermore, on May 4, 2021, the competent court requested a medical report from Penitentiary Unit No. 22 and requested that the proposed beneficiary be held in a space that would not compromise his health. On May 5, 2021, the Court consulted regarding the relevance of deriving the proposed beneficiary to a location outside of the penitentiary unit. In a medical report dated May 6, 2021, the physician of the Penitentiary Unit No. 22 reiterated that the confinement is not adequate for the proposed beneficiary’s recovery. He also stated that Mr. J.C.Z.R. had not been sent to a hospital outside of the prison because, in Penitentiary Unit No. 22, he had weekly check-ups by neurology service.

8. Between July and August 2021, Mr. J.C.Z.R. was transferred from Hospital Penitentiary Unit No. 22 Lisandro Olmos to Unit No. 9 La Plata, because his health issues were classified as “chronic”. He was being held in the health area, however, the applicant argued that this situation reduced the possibility of receiving adequate and timely medical care since Unit No. 9 is a common prison facility. The applicant indicated that the proposed beneficiary’s lawyer, in addition to continuing to demand his house arrest, requested that the competent authorities transfer him to a public institution where he can undergo treatment and rehabilitation. The applicant alleged that “holding Mr. Z.R. in a penitentiary establishment not only violates his right to health, life, and physical integrity, but also subjects him to discriminatory treatment that ignores his situation as a person with a disability”.

9. The applicant provided information on July 5, 2022 indicating that they continue to send “reports to the Court that controls the enforcement of his sentence but, to date, has not obtained a pronouncement that would mitigate the harmful impact and the acceleration of the deterioration that confinement in inhumane and degrading conditions causes in J.C.Z.R.”. The proposed beneficiary allegedly has contact with the applicant, reporting frequent events of convulsions,<sup>1</sup> in which he often injures himself (e.g., he hits himself on the floor, against his wheelchair, hurts his head, face and mouth, and loses sphincter control).

<sup>1</sup> For example, on May 5, 8, 16, 17, 18, 19, 25, 30 and 31; June 1, 2, 3, 8, 10, 11, 12, 13, 16 and 19; and July 3, 2022.

10. During the convulsions, the proposed beneficiary reportedly only receives paracetamol and/or ibuprofen for pain related to the injuries he sustains. He is allegedly not administered his seizure medication in a timely manner, primarily levetiracetam 500mg, and reportedly even goes long periods without the medication.<sup>2</sup> The proposed beneficiary's treatment reported at that time included levetiracetam 500 mg (twice daily), carbamazepine, phenytoin, and clonazepam. Moreover, the applicant indicated that an MRI scan ordered by the treating physician is pending.

11. On June 16, 2022, the proposed beneficiary reported experiencing difficulties when eating, as he finds it hard to chew and reportedly hurts his tongue during every seizure. On June 19, 2022, during a seizure episode, he was drowning in his own blood and his cellmates reportedly had to seek medical help. On June 21, 2022, it was reported that the authorities allegedly do not change the diaper that he wears, stating that "they tend to leave it on him for a long time and this causes him skin wounds". According to the applicant, "in recent times, the muscular tonicity of his entire body increased, but mainly in his face. He is unable to open his mouth, is barely able to communicate orally, and, even more serious, began to have serious difficulty ingesting solid and liquid foods." In this regard, the applicant indicated the following:

As for swallowing itself, the difficulties present in the process can only be determined through a specific study called video fluoroscopic swallowing study. This exam is very common for people who have had a cerebrovascular disease, as is the case of Mr. Z., and should be performed every so often given that his health issues could continue to deteriorate. J.C. has never participated in any similar exam. [...]  
Complications of dysphagia are malnutrition, dehydration, and bronchoaspiration, all of which are serious and have high morbidity and mortality. In this case, the chances of experiencing bronchoaspiration are elevated due to the extremely recurrent seizures that J.C. experiences.

12. According to the applicant, the medical assistance received by the proposed beneficiary is allegedly restricted to the nursing area, and "is limited to injecting drugs that are not recorded in his medical records or in the health nursing book". The proposed beneficiary was reportedly not informed about the side effects that could be caused by the injectable medication he receives "almost daily". Furthermore, the applicant indicated, for example, that after a seizure on July 3, 2022, the proposed beneficiary "fell out of his bed and cut his eyebrow", and only his cellmates helped him care for his injuries. In this context, the applicant added that he does not receive a specific diet and, despite his reduced mobility, he reportedly has to cook daily. This has allegedly resulted in burns on his legs after handling pots of boiling water.

13. Mr. J.C.Z.R. had allegedly received repeated information that "nothing can be done regarding his health issues, that he has sequelae of a stroke and that there is no possible treatment", and allegedly deprived him of access to "rehabilitation treatment, revision of his neurological medication schedule, or palliative treatment or treatment to reduce the episodes". The applicant added that he requires "kinesiological rehabilitation to reduce muscle stiffness, improve the capacity of the little partial movement he has, and avoid generating muscular hypertonicity due to atrophied muscles caused by lack of stimulation". However, "this is difficult, since the organisation for the assignment of appointments with kinesiology and their attendance is not fulfilled".

14. On August 4, 2023, the applicant reported that he is still pending the completion of "a series of studies that were already medically indicated by the neurology specialist who is following his case. These are an electroencephalogram, an MRI, and a video fluoroscopic swallowing study." The specialist reiterated that the swallowing study is relevant to verify if it is necessary to modify the consistency of the food in order to avoid bronchoaspirations "that could cause recurrent pneumonia to death, depending on the severity." The applicant indicates that, despite having managed shifts to carry out the required medical examinations, the

<sup>2</sup> The proposed beneficiary reportedly stated that he is off anti-seizure medication on: May 6, 9, 24, 24, 27, 30 and 31; June 1 and 2, 2022. On May 6, 2022, he reported that the previous day he was given levetiracetam 500mg and on July 5, 2022, he indicated that "approximately 15 days ago, he had gone two weeks without receiving the medication indicated for his seizures".

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transfer of the proposed beneficiary was never carried out, and the studies have been pending for more than a year.

15. Regarding the proposed beneficiary's current detention conditions, the applicant indicated that he is located in the inpatient ward of Penitentiary Unit No. 9 of the Buenos Aires Prison Service "and does not even have a suitable space for him to live". According to the applicant, the space is not adapted to provide rapid health care in cases of seizure. Consequently, the proposed beneficiary reportedly filed the legs of the bed himself to bring it closer to the floor and thus "avoid falling or hitting the floor" in a seizure episode. The applicant reported that it had inspected the area of the hospitalization room where the proposed beneficiary was being held on June 2, 2023, in the framework of its capacity as the Local Mechanism for the Prevention of Torture (*Mecanismo Local de Prevención de la Tortura*), and identified "appalling detention conditions and accommodation":

In particular, it has been reported that the area does not meet any of the requirements to be considered a hospitalization area. Some individuals have health issues that are often incapacitating, for which they require permanent assistance, but there are no medical personnel to perform the aid.

16. The applicant added that, at the time of the inspection, the bathrooms did not have hot water. The cells were reportedly damp and dark and lacked heating or lighting. In addition, there were alleged leaks and mold and the cells had not been adapted to allow mobility for people with disabilities. It was also indicated that the electrical connections are precarious, with the wiring in sight and on the ground, thereby "exposing everyone there to the risk of electrocution". In this context, the applicant indicated that Mr. J.C.Z.R. had developed "cervico-facial tumors", which were due to lymph node tuberculosis. The proposed beneficiary is reportedly undergoing treatment which is planned to last a whole year.

17. Moreover, the internment area of the Penitentiary Unit No. 9 allegedly does not have enough nurses, and the interned people themselves reportedly have to attend to the needs of others. The inspection carried out by the applicant also highlighted the following:

At the same time, the demand for care in emergency cases is reiterated: it is indicated that, in the event of emergencies, such as falls, fainting, or convulsions, health personnel delay their presence in the area, and the inmates must perform the first care tasks. On other occasions, when the personnel arrive, they do not cross the fence into the area, but rather administer the injectable medication through the fences.

18. The applicant also referred to the possibility of Mr. Z.R. being admitted to a hospital which specializes in neurology, based on an expert report of June 2021 carried out by the Expert Advisory Office of the Supreme Court of Justice of the Province of Buenos Aires. They indicated that there was no hospitalization or medical studies to supplement said hospitalization or intervention.

19. On August 30, 2023, the applicant indicated that, on August 8, 2023, the competent court for the supervision of the proposed beneficiary's sentence was informed that he had been having frequent convulsions, including one on August 7 during which he was injured. The proposed beneficiary reportedly indicated that the alleged increase in frequency of seizures was due "to a change in medication, but the reasons were not explained nor was he evaluated by a doctor."

20. The applicant indicated having sent information to the court, on August 8, 15, 17, and 23, 2023, in which they requested medical attention and carrying out the pending studies in favor of the proposed beneficiary. On all these occasions, the court had sent an official letter to the Penitentiary Unit requesting that the medical attention be provided, however, these were not complied with. Regarding the judicial proceedings requesting alternative measures to prison for Mr. J.C.Z.R., on August 11, 2023, Chamber V of the Criminal Cassation Court of the Province of Buenos Aires decided to declare the filed appeal inadmissible, stating that "he can adequately treat his health issues inside the prison as long as the medical indications are complied with".

However, the applicants indicated that the medical requirements are not complied with. The applicant also stated the following:

We must reiterate that the lack of rehabilitation, the loss of expected appointments for months due to the lack of transfer, the arbitrary decisions of the Buenos Aires Penitentiary Service (*Servicio Penitenciario Bonaerense*, SPB) to not comply with the appointments, of the SPB doctors to not comply with the studies requested by other professionals, the lack of access to fresh air, the reduced cell size, the lack of an adequate wheelchair, the lack of nursing care for convulsive episodes, and the refusal to apply alternatives to prison in his case accentuate Mr. J.C.Z.R.'s suffering, which constitutes torture.

## **B. Information provided by the State**

21. On July 7, 2021, the State reported that Mr. J.C.Z.R. was held from January to July 2, 2021 in Penitentiary Unit No. 22 Lisandro Olmos, which is reportedly a general mixed acute care hospital. The proposed beneficiary allegedly received “medical attention and control there, as well as weekly assistance from the specialized neurology area.” The attending physician treating Mr. J.C.Z.R. in the Penitentiary-Hospital Unit No. 22 Lisandro Olmos indicated, in a report dated July 5, 2021, that the “patient who, after having reached an acceptable adherence and response to the treatment and physical rehabilitation measures, should recover in a confinement setting under an outpatient modality, hospital discharge is suggested”. The proposed beneficiary was transferred to Penitentiary Unit No. 9 La Plata.

22. The State referred to a Departmental Expert Report dated March 21, 2021, prepared in the context of the legal proceedings related to the proposed beneficiary, in which the following is stated:

Frequent seizures with no response to treatment place the patient at risk of sudden death and strategies must be implemented to reduce the number of seizures currently occurring.  
It is advisable to admit the patient to an outpatient institution specialized in Neurology for further evaluation in the hope that this will lead to an effective treatment that will control the episodes as soon as possible.

The health issues he has experienced ARE result of a serious and incurable disease, but he is NOT in a terminal period and once he can be compensated in the out-of-hospital internment and his treatment is adjusted, he will be able to return to his penitentiary lodging.

23. Moreover, the State provided copies of medical evaluations performed on the proposed beneficiary on March 29 and July 5, 2021, which indicate adjustments to his medication and the complexity of his condition, classified as “refractory”. The State also alleged that legal proceedings were still pending in favor of the house arrest of Mr. J.C.Z.R.<sup>3</sup>. However, on June 10, 2021, the competent court had rejected this request considering that:

a)- HE HAS NOT BEEN REFERRED TO AN EXTERNAL HOSPITAL, AS HE IS ASSISTED WEEKLY BY THE NEUROLOGY SERVICE, DR. [A.M.]. b)- THE NEUROLOGY SERVICE DIAGNOSES THE PATIENT WITH REFRACTORY EPILEPSY. ATTEMPTS ARE BEING MADE TO CONTACT EPILEPSY CARE CENTRES IN THE PUBLIC HEALTH SECTOR. NO FAVORABLE RESPONSE TO DATE. IN THE LAST TWO WEEKS THE PATIENT HAS EXPERIENCED AT LEAST 4 EPISODES OF SEIZURES.

24. Moreover, the court argued that “neither of the two proposed domiciles have the necessary characteristics to be able to assist and treat Mr. Z.’s health issues”. The aforementioned decision of June 10, 2021

<sup>3</sup> According to the State, on September 22, 2022, the competent court decided “not to grant the request for house arrest”, a decision confirmed on appeal on December 3, 2020. Subsequently, on April 15, 2021, by means of the decision issued by Chamber III of the Court of Criminal Cassation, it was decided to uphold the appeal filed in favor of the proposed beneficiary, returning the proceedings to the jurisdiction of origin “to issue a new ruling regarding the request for house arrest of [J.C.Z.R.], taking into account the current health situation that emerges from the medical report issued at the Health Unit No. 22 on March 29.”

was appealed. In this regard, the State alleged that the proposed beneficiary's situation was being settled internally and that he had access to medical and pharmacological treatment.

25. On October 21, 2021, the State reiterated that the request for house arrest is hindered by the lack of a receiving address for Mr. Z.R., indicating that "from Unit 22, an attempt was made to arrange house arrest with negative results, given that the family members, at the time of the environmental assessment, did not assure that they could take care of the patient in question and did not assure that they could transfer him to the nearest hospital in case he suffered new episodes of convulsive crisis". On June 28, 2021, the Second Chamber of the Honorable Court of Appeals and Guarantees in the Criminal Department of Lomas de Zamora, ratified the decision not to grant house arrest in favor of Mr. Z.R. of June 10, 2021, stating, among other aspects, that "the decision in question is correct in opting for the possibility of an out-of-home stay in order to mitigate his suffering, as the forensic doctor has stated". The proposed beneficiary's lawyer filed an appeal for cassation, which was granted on August 20, 2021 and was pending at that time.

26. The State also indicated that an official letter was sent to the General Directorate of Penitentiary Health "to establish the feasibility of returning Mr. Z.R. in the Penitentiary Unit No. 22 Lisandro Olmos, in order to guarantee medical and neurological assistance and control on a regular basis", as well as "to determine if there is any institution outside the hospital with specialization in Neurology, where he can be hospitalized and if so, to urgently arrange the necessary means to proceed with his hospitalization". Moreover, according to the State, at that time the treatment of the proposed beneficiary is as follows:

- Carbamazepine 2 tablets every 8 hours.
- Phenytoin 1 tablets every 12 hours.
- Levetiracetam 1 tablets every 12 hours.
- Clonazepam 1tablet once per day.
- More medication for acute events and evolutionary control.

27. On August 19, 2022, the State reported that Mr. J.C.Z.R. continues under pharmacological treatment.<sup>4</sup> In a medical report dated August 17, 2022, provided by the State, the prison doctor indicated that on February 24, 2022, an MRI of the proposed beneficiary's brain was attempted. The attempt was unsuccessful given that the proposed beneficiary had a seizure during the exam. On March 15, 2022, control was performed by neurology and on April 1, he completed a session of kinesiology. In addition, on June 28, 2022, the proposed beneficiary reportedly attended the "El Dique" Zonal Hospital specialized in chronic patients. The aim was to evaluate the possibility of his permanent hospitalization, for which video swallowing and EEG examinations were requested.<sup>5</sup> The State reported that it was arranging the appointment for the video swallowing study, while the EEG was to be carried out on September 6, 2022. In this context, the prison doctor stated that "[...] we find ourselves with a person who is deprived of his liberty, who has a chronic, sequelae, disabling, progressive health issue, with no therapeutic possibilities of clinical improvement, only support, who requires help from third parties for his daily tasks". They conclude by indicating that "some type of benefit" was suggested to the Judiciary, "in order to prevent a worsening of his quality of life".

28. In the same vein, the State alleged that a new request for house arrest is allegedly being evaluated, this time with a proposed address at the "Hogar de Cristo". According to the State, "in this framework, it was ordered to verify whether the proposed establishment has the means and resources to provide medical and rehabilitation assistance to Mr. Z.R., as well as to assist him on a daily basis or to transport him and accompany him to the check-ups and/or medical studies that he must undergo in accordance with the health issues he has."

<sup>4</sup> At that time, he was under pharmacological treatment receiving: carbamazepine 2 tablets every 8 hours; phenytoin 1 tablet every 8 hours; levetiracetam 1 tablet/day; plus, medication for acute events and evolutionary control.

<sup>5</sup> According to free search, it means electroencephalogram.

29. On August 4, 2023, the State reported that the competent court rejected the request for house arrest in the “Hogar de Cristo”, a decision that was upheld on appeal. As indicated:

the location does NOT meet the necessary conditions to attend to the diversity of issues that the inmate’s health demands, since it does not have a medical guard 24 hours a day. This situation could be detrimental to the health of the convicted person, especially if it is taken into account that he must have periodic medical controls and studies, which implies that there must be sufficient resources to pay for supplies, medication, and transfers to the regional hospital which is an issue that could not be confirmed.

30. In a court decision of January 31, 2023, the court allegedly considered, regarding the situation of Mr. J.C.Z.R. at that time that:

it is noted that he is being controlled, medicated, and under constant monitoring, so that his accommodation in the prison complex does not aggravate his condition. However, due to the complexity of the health issue, his hospitalization outside the hospital until his convulsive episodes can be controlled and compensated for, as suggested by the expert Collins [Departmental Expert Advice Report dated March 21, 2021] would be the best option presented to us for the case.

31. Regarding the referral of the proposed beneficiary to the Zonal Hospital Specialized in Chronic Diseases “El Dique”, the State reiterated that he was evaluated in that institution on June 28, 2022, and “the professional who saw him indicated a series of medical studies, with the completion of a video swallowing study pending”. In this scenario, the State informed that the proposed beneficiary continues to be held in the Penitentiary Unit No. 9 La Plata, where he reportedly receives:

medical care both inside and outside the prison, both within the Health Unit located in the prison complex and in the Penitentiary Unit No. 22 L. Olmos (Mixed Acute General Hospital), where he undergoes kinesiology rehabilitation (next appointment for August 16) and controls by the neurology specialty, as well as the Ganglionic Ultrasound service [...].

32. Mr. J.C.R.Z. is “clinically stable” and, as reported by the State in its aforementioned report of August 4, 2023, “has not presented new convulsive episodes in the last two months.”

### **III. ANALYSIS OF THE ELEMENTS OF SERIOUSNESS, URGENCY, AND IRREPARABLE HARM**

33. The precautionary measures mechanism is part of the Commission’s function of overseeing compliance with the human rights obligations set forth in Article 106 of the Charter of the Organization of American States. These general functions are set forth in Article 41(b) of the American Convention on Human Rights, as well as in Article 18(b) of the Statute of the IACHR. Moreover, the precautionary measures mechanism is enshrined in Article 25 of the Rules of Procedure. In accordance with this Article, the IACHR grants precautionary measures in urgent and serious situations in which these measures are necessary to avoid irreparable harm to persons or to the subject matter of a petition or case before the organs of the inter-American system.

34. The Inter-American Commission and the Inter-American Court of Human Rights (“the Inter-American Court” or “I/A Court H.R.”) have established repeatedly that precautionary and provisional measures have a dual nature, both protective and precautionary.<sup>6</sup> Regarding the protective nature, these measures seek to avoid irreparable harm and preserve the exercise of human rights.<sup>7</sup> To do this, the IACHR shall assess the

<sup>6</sup> See in this regard: I/A Court H.R. [Matter of the Yare I and Yare II Capital Region Penitentiary Center](#). Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela. Order of the Inter-American Court of Human Rights of March 30, 2006, considerandum 5; I/A Court H.R. [Matter of Carpio Nicolle et al. v. Guatemala](#). Provisional Measures. Order of July 6, 2009, considerandum 16.

<sup>7</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 8; I/A Court H.R. [Matter of Bámaca Velásquez](#). Provisional Measures regarding Guatemala. Order of the Court of January 27, 2009, considerandum 45; I/A Court H.R. [Matter of Fernández Ortega et al.](#) Provisional Measures regarding Mexico. Order of the Court of April 30, 2009, considerandum 5; I/A Court

problem raised, the effectiveness of state actions to address the situation described, and the vulnerability to which the persons proposed as beneficiaries would be exposed if the measures are not adopted.<sup>8</sup> Regarding their precautionary nature, these measures have the purpose of preserving legal situations while under the consideration of the IACHR. They aim to safeguard the rights at risk until the request pending before the inter-American system is resolved. Their object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful effect (*effet utile*) of the final decision. In this regard, precautionary or provisional measures enable the State concerned to comply with the final decision and, if necessary, to implement the ordered reparations.<sup>9</sup> In the process of reaching a decision, according to 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.

35. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt. The information provided should be assessed from a *prima facie* standard of review to determine whether a serious and urgent situation exists.<sup>10</sup> Similarly, the Commission recalls that, by its own mandate, it is not called upon to make a determination on any individual criminal liabilities for the facts alleged. Moreover, in this proceeding, it is not appropriate to rule on violations of rights enshrined in the American Convention or other applicable instruments.<sup>11</sup> This is better suited to be addressed by the Petition and Case system. The analysis performed herein is exclusively related to the requirements set forth in Article 25 of the Rules of Procedure, which can be resolved without making any determinations on the merits.<sup>12</sup>

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H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish].

<sup>8</sup> See in this regard: I/A Court H.R. [Matter of Milagro Sala](#). Request for Provisional Measures regarding Argentina. Order of the Inter-American Court of Human Rights of November 23, 2017, considerandum 5 [only in Spanish]; I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 9; I/A Court H.R. [Matter of the Criminal Institute of Plácido de Sá Carvalho](#). Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of February 13, 2017, considerandum 6 [only in Spanish].

<sup>9</sup> See in this regard: I/A Court H.R. [Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center](#). Provisional Measures regarding Venezuela. Order of the Court of February 8, 2008, considerandum 7; I/A Court H.R. [Matter of “El Nacional” and “Así es la Noticia” newspapers](#). Provisional Measures regarding Venezuela. Order of the Court of November 25, 2008, considerandum 23; I/A Court H.R. [Matter of Luis Uzcátegui](#). Provisional Measures regarding Venezuela. Order of the Court of January 27, 2009, considerandum 19.

<sup>10</sup> See in this regard: I/A Court H.R. [Matter of Members of the Miskitu Indigenous Peoples of the North Caribbean Coast regarding Nicaragua](#). Extension of Provisional Measures. Order of the Inter-American Court of Human Rights of August 23, 2018, considerandum 13 [only in Spanish]; I/A Court H.R. [Matter of Children Deprived of Liberty in the “Complexo do Tatuapé” of the Fundação CASA](#). Request for extension of provisional measures. Provisional Measures regarding Brazil. Order of the Inter-American Court of Human Rights of July 4, 2006, considerandum 23.

<sup>11</sup> IACHR. Resolution 2/2015. Precautionary Measure No. 455-13. [Matter of Nestora Salgado regarding Mexico](#). January 28, 2015, para. 14; IACHR. Resolution 37/2021. Precautionary Measure No. 96-21. [Gustavo Adolfo Mendoza Beteta and family regarding Nicaragua](#). April 30, 2021, para. 33.

<sup>12</sup> In this regard, the Court has indicated that “[it] cannot, in a provisional measure, consider the merits of any arguments pertaining to issues other than those which relate strictly to the extreme gravity and urgency and the necessity to avoid irreparable damage to persons.” See in this regard: I/A Court H.R. [Matter of James et al. regarding Trinidad and Tobago](#). Provisional Measures. Order of the Inter-American Court of Human Rights of August 29, 1998, considerandum 6; I/A Court H.R. [Matter of Barrios Family v.](#)



36. This request for precautionary measures seeks to protect Mr. J.C.Z.R., who is deprived of liberty and is serving his prison sentence. In January 2021, he was transferred to the Penitentiary-Hospital Unit No. 22 Lisandro Olmos, which is reportedly a mixed acute general hospital, where he has received neurological accompaniment weekly. Subsequently, in July 2021, he was sent to Penitentiary Unit No. 9 La Plata, after being discharged with the indication of “recovering in an outpatient confinement setting”, where he has been since then.

37. At the time of evaluating the requirement of *seriousness*, the IACHR begins by recalling the position of special guarantor in which the State finds itself in relation to persons deprived of liberty. The above, due to the unique interaction of subordination between the person deprived of liberty and the State. This is characterized by the particular intensity with which the State can regulate their rights and obligations, and by the very circumstances of being deprived of one’s liberty, where prisoners are prevented from satisfying on their own a series of basic needs that are essential for the development of a dignified life in such terms as may be possible under the circumstances.<sup>13</sup>

38. The Commission notes that, according to the information available, in 2019 Mr. J.C.Z.R. had a cerebrovascular accident (CVA). As a result, the proposed beneficiary was left with a “chronic, sequelae, disabling, progressive” health issue of right facio-brachio-cruel hemiplegia, dysarthria, and convulsions which would cause seizures followed by fainting spells with loss of consciousness. According to the information available, the Commission understands that the health condition is reportedly “serious” and “incurable” and requires rehabilitation, neurological medication, and crisis management. Based on the above, the proposed beneficiary is a person with a disability, with alleged “limited partial movement”. He is dependent on a wheelchair and support from people for daily activities. The applicant alleged that, given the seizures, he often injures himself. For example, it was reported that he sometimes falls to the floor or against his wheelchair, and hurts his head, face, and mouth, chokes, and/or loses control of the sphincter. It was also reported that, given his health condition, he experiences dysphagia and, consequently, “malnutrition, dehydration, and bronchial aspiration”, all of which are “serious and with high morbimortality”.

39. Regarding his health condition, the Secretariat notes that the parties agreed that the detention conditions identified these challenges for the adequate health care of the proposed beneficiary. The Commission identifies that, over time, various national authorities have been providing medical recommendations on the proposed beneficiary’s health. For example, at the request of prison authorities, internal medical reports or judicial assessments between 2021 and 2023 have mandated that the proposed beneficiary be placed in an extramural institution specializing in neurology for compensation and adjustment of treatment. In addition, according to the responsible court in a decision of August 2023, it was indicated that “his health issues can be adequately treated inside the prison as long as the medical indications are complied with” (*vid supra* para. 5-7, 20; 22, 25-27, 30). Based on the information available to the parties, the Commission highlights the following considerations over time:

- In 2021, the director of the Penitentiary Unit No. 22 requested the Court to consider alternative measures to prison and attached a medical evaluation by the Admission and Monitoring Group of Penitentiary Unit No. 22 in which he stated that he considered relevant medical care outside the prison would stop the proposed beneficiary’s health from deteriorating.

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Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2021, considerandum 2 [only in Spanish].

<sup>13</sup> I/A Court H.R. Matter of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations, and costs. Judgment of February 29, 2016. Series C No. 312, para. 168.

- According to a medical report dated January 2021: “It is noted that the confinement environment is not suitable for the recovery of his condition due to the need to carry out rehabilitation activities as early as possible and in a suitable physical place. In addition, it puts his physical integrity at risk.”
- According to the report of the Departmental Expert’s Office of March 21, 2021, which was carried out in the framework of the legal proceedings of the proposed beneficiary, it was stated that “the frequent epileptic seizures without response to treatment place the patient at risk of sudden death and it is necessary to implement strategies to reduce the number of seizures that currently occur”. It was indicated that it would be “advisable to be admitted to an outpatient institution with specialization in neurology for further evaluation in the hope that this would lead to an effective treatment that would control the episodes as soon as possible”. It was indicated that, as he is not terminally ill, “once he can be compensated in the out-of-home confinement and his treatment is adjusted, he will be able to return to his penitentiary accommodation”.
- According to a medical report dated May 6, 2021, the physician of the Penitentiary Unit No. 22 reiterated that the confinement is not adequate for the proposed beneficiary’s recovery.
- On June 10, 2021, the Court found that the “neurology service diagnosed the condition as refractory epilepsy” and that “attempts are being made to contact epilepsy centers in the public health sector[,] without a favorable response”. In the same decision, at the time of evaluating other receiving homes to which the proposed beneficiary could be sent, the Court considered that the proposed homes did not have “the necessary characteristics to be able to assist and care for Mr. Z.’s health issues”.
- On June 28, 2021, the Chamber ratified the decision of June 10, 2021, stating, among other things, that “the decision in question is correct in opting for the possibility of an outpatient hospitalization for the purpose of mitigating his ailment, as the forensic doctor has correctly stated.
- In October 2021, the State indicated that it had sent a letter to the General Directorate of Penitentiary Health “to establish the feasibility of moving Mr. Z.R. in the Penitentiary Unit No. 22 Lisandro Olmos, in order to guarantee medical and neurological assistance and control on a regular basis”, as well as “to determine if there is any institution outside the hospital with specialization in Neurology, where he can be hospitalized and if so, to urgently arrange the necessary means to proceed with his hospitalization”.
- In August 2022, the prison doctor stated that “[...] we find ourselves with a person who is deprived of his liberty, who has a chronic, sequelae, disabling, progressive health issue, with no therapeutic possibilities of clinical improvement, only support, who requires help from third parties for his daily tasks”. They conclude by indicating that “some type of benefit” was suggested to the Judiciary, “in order to prevent a worsening of his quality of life”.
- In January 2023, the Court warned that the proposed beneficiary’s health situation “is being controlled, medicated, and under constant follow-up, so that his accommodation in the prison complex does not aggravate his condition.” However, due to the complexity of the health issue, his hospitalization outside the hospital until his convulsive episodes can be controlled and compensated for, as suggested by the expert Collins [Departmental Expert Advice Report dated March 21, 2021] would be the best option presented to us for the case.
- On August 11, 2023, the Judiciary decided that “his health issues can be adequately treated inside the prison as long as the medical indications are complied with”

40. Considering the previous assessments of national entities in the country and based on the proposed beneficiary’s health condition, the Commission observes that there are assessments that he can be placed in a location or place where “his convulsions can be controlled and compensated”, which, moreover, according to the information available, has been ordered by judicial decisions of 2021 and 2023. The available information reflects various efforts on the part of the national authorities in this regard. In this regard, the Commission takes note and values the actions taken to be able to place him in a safe location or space, which can be seen in the steps taken to transfer him to a family home; return him to Penitentiary Unit No. 22 Lisandro Olmos; or refer him to institutions such as the “Hogar de Cristo” and the Zonal Hospital

Specialized in Chronic Diseases “El Dique”. However, the information available shows that the proposed beneficiary is still held in Penitentiary Unit No. 9 La Plata since 2021.

41. The Commission notes that, according to the information sent by the State, the proposed beneficiary is allegedly “stable” and receiving medical attention both inside and outside the Penitentiary Unit where he is currently being held. However, this Commission is concerned that, having been medically assessed since 2021, and most recently in January 2023, that, “due to the complexity of the health condition” of the proposed beneficiary, hospitalization outside the hospital would be “the best option” (*see above* para. 39) to date, there are no elements available to assess the reasons to support why this hospitalization could not be carried out. The Commission understands that medical assessments may vary over time depending on the proposed beneficiary’s health status. However, given the consistency of the medical recommendation, as well as the scope of the actions taken by the State over time, in addition to what has been indicated at the judicial level over time, the Commission does not have elements to evaluate the existence of a new medical evaluation that would rule out the possibility of hospitalization or that would indicate that it would no longer be the most advisable to date, as it was evaluated at the time at the internal level, at least for approximately three years.

42. The Commission recalls that the protection of the right to life of persons deprived of liberty includes the duty of the State to provide adequate and timely medical treatment.<sup>14</sup> The Commission understands that the proposed beneficiary is allegedly serving his sentence. However, it understands that a location or space has been sought where the proposed beneficiary can be properly served. Although the internment option was the one that has been evaluated over the years, the IACHR recalls that:

there are a number of health issues that, without requiring the patient to stay in a hospital, make it necessary for them to remain in a place where their daily life activities can be attended to by means of special care that cannot be assured in prison. For example, in cases of chronic, neurodegenerative, or terminal diseases, or which, in general, require attention that can only be provided by a specialized caregiver.<sup>15</sup>

43. The Commission warns that, on August 11, 2023, the Judiciary decided that “his health issues can be adequately treated inside the prison as long as the medical indications are complied with”. However, to date, and according to the applicants’ allegations, the proposed beneficiary continues to face a situation of alleged lack of timely medical care, missed medical appointments and exams, inconsistent outpatient care, and interruption in the provision of prescribed medication (*vid supra* para. 9-15). In this regard, the Commission understands that, throughout the proceeding, the applicants have raised questions regarding the health care that the proposed beneficiary allegedly receives and the medical information that is reportedly provided to the proposed beneficiary during his treatment. According to the supporting documents, the medical situation of the proposed beneficiary has no therapeutic possibilities of clinical improvement and only of treatment. In this sense, it is important that the medical attention received is as adequate as possible in regard to timeliness and to the medical situation presented. The Commission is concerned about the applicants’ statement of August 2023, which indicates that some medical evaluations, such as an electroencephalogram, an MRI, and a video swallowing study have been pending since 2022. In particular, the Commission warns that the video swallowing study would be relevant to verify if food consistency must be modified to avoid bronchial aspiration “which could cause recurrent pneumonia or death, depending on the severity”. Although the State indicated, in its last submission of August 2023, that some evaluations had already been scheduled, the Commission observes that, according to the State itself, the video swallowing evaluation is still pending. In this regard, the Commission notes that, internally in August 2023, a Chamber decided that the proposed beneficiary may remain in prison on condition that “as long as that medical indications are complied with”.

<sup>14</sup> I/A Court H.R. Matter of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations, and costs. Judgment of February 29, 2016. Series C No. 312, para. 171.

<sup>15</sup> *Ibid.*, para. 246.

44. Considering the above judicial assessment, the IACHR observes that the applicant alleged, upon submitting a report of the on-site inspection conducted on June 2, 2023, that the proposed beneficiary is held in the internment room in inadequate detention conditions, especially given his health and disability. He allegedly does not have adequate space for a wheelchair nor has the cell been adapted to safely manage the seizures. As an example, the applicant highlighted that the proposed beneficiary had to file the legs of the bed to bring it closer to the ground and mitigate risks when convulsing. In addition, the applicant added that the space is damp, dark, lacks heat and light, leaks, mold, and has exposed wiring on the floor which poses a risk of electrocution. Moreover, the bathrooms are reportedly not adapted for people with disabilities. In that space, according to the applicants, “it is the inmates themselves who must attend to the needs of the others”, since there are allegedly not enough nurses. It has also been said that the nurses delay their presence in the area, and, when they arrive, they reportedly do not cross the fence into the area, but rather administer injectable medication through the fences. Given this context, according to the applicant, Mr. J.C.Z.R. allegedly developed “cervico-facial tumors”, due to nodal tuberculosis, which is reportedly under treatment.

45. In this regard, the Commission understands that the corresponding assessments must be carried out to ensure that the place where the proposed beneficiary will be held has the corresponding medical and safety conditions. These assessments must be made considering the medical situation of the proposed beneficiary, the seriousness of his progressive and disabling health issues, his refractory epilepsy, its evolution over time, the need for additional medical studies, and the detention conditions in which he is being held. The foregoing, in the opinion of this Commission, requires prompt and expeditious action on the part of the State, considering that the proposed beneficiary is in its custody and reportedly has increasingly frequent episodes of seizures over time. For example, it was recently reported that the proposed beneficiary was injured in an epileptic episode on August 7, 2023. According to the applicants, the incident was brought on due to a change of medication.

46. In this regard, in assessing the alleged elements of seriousness, the Commission notes that the State did not provide recent information to refute the allegations regarding the detention conditions indicated by the applicant, despite the fact that the IACHR requested specific information in this regard. The foregoing reflects the special seriousness of the proposed beneficiary’s health condition, which requires seizure crisis management, and his disability, which makes him particularly vulnerable. In this regard, the IACHR recalls that in the *Matter of Chinchilla Sandoval et al. v. Guatemala*, the Inter-American Court considered:

that the State had the obligation to guarantee accessibility to persons with disabilities who are deprived of their liberty, [...], in accordance with the principle of non-discrimination and with the interrelated elements of health protection, namely, availability, accessibility, acceptability, and quality, including the provision of necessary reasonable accommodation in the prison, to enable them to live as independently as possible and on an equal footing with other persons deprived of their liberty.<sup>16</sup>

47. In view of the previous assessments, and in light of the *prima facie* evaluation criterion of the precautionary measures mechanism, the Commission considers that the rights of Mr. J.C.Z.R. are at serious risk.

48. Regarding the requirement of *urgency*, the Commission considers that it has been met, in view of the fact that the passage of time without adequate and timely health care in favor of the proposed beneficiary may imply that he is prematurely subject to an aggravation of his health situation or even result in his death. In this regard, the Commission warns that, considering the information available in the context

<sup>16</sup> Ibid., para. 215.

of deprivation of liberty in which he is placed, the risks faced by the proposed beneficiary have not been mitigated to date and require immediate action by the State authorities.

49. Regarding the requirement of *irreparable harm*, the Commission considers that it has been met, insofar as the potential impact on the rights to health, life, personal integrity, by their very nature, constitutes the maximum situation of irreparability.

## **I. BENEFICIARY**

50. The Commission declares J.C.Z.R., who is duly identified in these proceedings in accordance with subsection 6.b. of Article 25 of the IACHR Rules of Procedure, to be the beneficiary of the precautionary measures.

## **II. DECISION**

51. The Inter-American Commission considers that this matter meets, *prima facie*, the requirements of seriousness, urgency, and irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, it requests that Argentina:

- a) adopt the necessary measures to protect the rights of Mr. J.C.Z.R. to life, personal integrity, and health. In particular, provide him with the required medical treatment in a timely and appropriate manner, and ensure that the detention conditions are in line with applicable international standards, so as to fulfill the treatment he requires due to his health issues and the needs arising from his disability;
- b) consult and agree upon the measures to be adopted with the beneficiary and his representatives; and
- c) report on the actions undertaken to investigate the alleged events that led to the adoption of this precautionary measure, so as to prevent them from reoccurring.

52. The Commission also requests that the State of Argentina report, within 15 days as from the day after this resolution, on the adoption of the required precautionary measures and to update that information periodically.

53. The Commission emphasizes that, in accordance with Article 25(8) of its Rules of Procedure, the granting of this precautionary measure and its adoption by the State do not constitute a prejudgment on any violation of the rights protected under the applicable instruments.

54. The Commission instructs its Executive Secretariat to notify this resolution to the State of Argentina and the applicant.

55. Approved on November 20, 2023, by Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Roberta Clarke, Second Vice-President; Julissa Mantilla Falcón; Carlos Bernal Pulido; and José Luis Caballero Ochoa, members of the IACHR.

María Claudia Pulido  
Assistant Executive Secretary