

**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION TO LIFT PRECAUTIONARY MEASURES 35/2024**

Precautionary Measure No. 181-07
Lovinsky Pierre-Antoine regarding Haiti
May 28, 2024
Original: Spanish

I. SUMMARY

1. The Inter-American Commission on Human Rights (IACHR) decides to lift these precautionary measures in favor of Lovinsky Pierre-Antoine regarding Haiti. At the time of making this decision, the Commission notes that 16 years have passed since the precautionary measures were granted, and there has been no updated information on the beneficiary’s situation for more than 11 years. Therefore, the Commission considers that it does not have the elements to continue to consider that the requirements of Article 25 of its Rules of Procedure have been met and, consequently, it decides to lift these precautionary measures.

II. BACKGROUND INFORMATION

2. On February 28, 2008, the IACHR granted precautionary measures in favor of the human rights defender Lovinsky Pierre-Antoine. In the request, it was alleged that on August 12, 2007, Mr. Lovinsky Pierre-Antoine had been intercepted while returning from a meeting with a delegation from abroad that was conducting an investigation in Haiti, and that his whereabouts had been unknown since then. In view of this situation, the Commission granted precautionary measures and requested that the State of Haiti take the necessary actions to establish the whereabouts of Lovinsky Pierre-Antoine, guarantee his life and physical integrity, and report on the actions taken in order to conduct a judicial inquiry into the facts that gave rise to the adoption of precautionary measures.¹

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

3. During the time the precautionary measures were in force, the Commission followed-up on the situation by requesting information from the parties. In this regard, communications have been received from the parties and sent from the IACHR on the following dates:

	State	Representation	IACHR
2012	August 30, September 13	August 31, September 3	August 20, September 13
2013	July 3		July 1, September 26
2019			November 4
2022			April 20
2023			September 22
2024			January 9

¹ IACHR, Annual Report 2008, Chapter III, Section C: Petitions and Cases before the Inter-American Commission on Human Rights, para. 25.

4. On September 22, 2023 and January 9, 2024, the Commission reiterated the request for information to the representation, in order to assess keeping the precautionary measures in force. However, the representation has not responded to the latest communications and the deadlines granted have since expired.

5. Eugenia Charles, Jacob François and Wilson Mesilien exert representation before the Commission.

A. Information provided by the State

6. On August 30, 2012, the State acknowledged receipt of the Commission's letter and announced that it forwarded it to the Ministry of Justice and Public Security. On September 13, 2012, the Haitian ambassador to the Organization of American States (OAS) formally requested clarification on the matter from the IACHR. On July 3, 2013, the Ministry of Foreign Affairs acknowledged receipt of the Commission's requests and stated that they would be forwarded to the Ministry of Justice and Public Security.

B. Information provided by the representation

7. On August 31, 2012, the representation once again stated that they were still uncertain about the beneficiary's whereabouts. Furthermore, it was requested to know whether Mr. Pierre-Antoine was in the custody of the State. On September 3, 2012, the beneficiary's wife stated that they still did not have any information on Mr. Pierre-Antoine's whereabouts.

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

9. 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 oversight functions are provided for in Article 41 (b) of the American Convention on Human Rights, as well as in Article 18 (b) of the IACHR Statute; while the mechanism of precautionary measures is set forth in Article 25 of the Commission's 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.

10. The Inter-American Commission and the Inter-American Court of Human Rights ("the Inter-American Court" or "I/A Court H.R.") have repeatedly established that precautionary and provisional measures have a dual nature, both protective and precautionary.² Regarding the protective nature, these measures seek to avoid irreparable harm and protect the exercise of human rights.³ To do this, the IACHR shall assess the problem raised, the effectiveness of state actions to address the situation described, and how vulnerable the

² I/A Court H.R., Matter of the Yare I and Yare II Capital Region Penitentiary Center (Yare Prison), Request for Provisional Measures submitted by the IACHR regarding the Bolivarian Republic of Venezuela, Order of March 30, 2006, considerandum 5; Matter of Carpio Nicolle et al. v. Guatemala, Provisional Measures, Order of July 6, 2009, considerandum 16.

³ I/A Court H.R., Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center. Provisional Measures regarding Venezuela. Order of February 8, 2008, considerandum 8; Matter of Bámaca Velásquez. Provisional Measures regarding Guatemala. Order of January 27, 2009, considerandum 45; Matter of Fernández Ortega et al. Provisional Measures regarding Mexico. Order of April 30, 2009, considerandum 5; Matter of Milagro Sala, Provisional Measures regarding Argentina. Order of November 23, 2017, considerandum 5.

proposed beneficiaries would be left in case the measures are not adopted.⁴ Regarding their precautionary nature, these measures have the purpose of preserving a legal situation while under study by the organs of the inter-American system. They aim to safeguard the rights at risk until the petition 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. 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.

11. In this sense, Article 25(7) of the Commission’s Rules of Procedure establishes 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 shall assess whether the serious and urgent situation and the risk of irreparable harm that caused the adoption of the precautionary measures persist. Furthermore, it shall consider whether there are new situations that may comply with the requirements outlined in Article 25 of its Rules of Procedure.

12. Similarly, the Commission recalls that while the assessment of the procedural requirements when adopting precautionary measures is carried out from a *prima facie* standard of review, keeping such measures in force requires a more rigorous evaluation.⁵ In this sense, when no imminent risk is identified, the burden of proof and argument increases over time.⁶ The Inter-American Court has indicated that the passage of a reasonable period of time without threats or intimidation, added to the lack of imminent risk, may lead to the lifting of international protection measures.⁷

13. In the matter at hand, the Commission recalls that the precautionary measures were granted in 2008 in favor of Lovinsky Pierre-Antoine, a human rights defender, who was intercepted on August 12, 2007, upon his return from a meeting with a delegation conducting an investigation in Haiti. The Commission observes that, in 2012, both the representation and the beneficiary’s wife stated that his whereabouts are still unknown. Since 2012, the IACHR has not received any updates on the beneficiary’s situation from his representation or family members.

⁴ I/A Court H.R., *Matter of Milagro Sala*, Provisional Measures regarding Argentina, Order of November 23, 2017, considerandum 5; *Matter of Internado Judicial Capital El Rodeo I and El Rodeo II*, Provisional Measures regarding Venezuela, Order of February 8, 2008, considerandum 9; *Matter of the Criminal Institute of Plácido de Sá Carvalho*, Provisional Measures regarding Brazil, Order of February 13, 2017, considerandum 6.

⁵ I/A Court H.R., *Matter of Fernandez Ortega et al.*, Provisional Measures regarding Mexico, Order of February 7, 2017, considerandums 16 and 17.

⁶ I/A Court H.R., *Matter of Fernandez Ortega et al.*, Provisional Measures regarding Mexico, Order of February 7, 2017, considerandums 16 and 17.

⁷ I/A Court H.R., *Matter of Fernandez Ortega et al.*, Provisional Measures regarding Mexico, Order of February 7, 2017, considerandums 16 and 17.

14. The Commission also recalls that the representation of the beneficiaries who wish the measures to continue must provide proof of the reasons for doing so.⁸ In this regard, Article 25(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. In this regard, the Commission observes that the representatives have not replied to the Commission since 2012. This makes it difficult for the Commission to access their observations or reports on this matter. The Commission notes that it has requested information from the representation over time. In particular, it states that, since 2023, following communications in which it warned that it would analyze keeping these precautionary measures in force, the representation did not provide any response.

15. In addition, the Commission notes with concern that, despite repeated requests, the State has not provided any response indicating the actions implemented to locate the whereabouts of the beneficiary or to report on his situation. In 2013, after indicating that the Commission's correspondence would be transferred to the Ministry of Justice and Public Security, no subsequent communications were sent.

16. The Commission recalls that, in the analysis of compliance with the procedural requirements in cases where the individual's whereabouts are unknown, it is important to analyze each specific case, assessing the time elapsed, the actions of the competent authorities, as well as the allegations of the representation.⁹ In this regard, in this matter, the Commission observes that the beneficiary disappeared in 2007. Since then, sixteen years have passed and the IACHR regrets that the parties have not submitted reports since 2012, despite the requests for information.

17. In view of the previous considerations, taking into account the time elapsed since the disappearance, the nature of the precautionary measures mechanism, in addition to the information available and the assessment that has been carried out, the Commission understands that it currently has no elements to support compliance with the requirements of Article 25 of its Rules of Procedure. In view of the above, and taking into account the exceptional and temporary nature of precautionary measures,¹⁰ the Commission considers it appropriate to proceed with the lifting of these measures.

18. In line with what has been indicated by the Inter-American Court in various matters,¹¹ a decision to lift the precautionary measures cannot imply that the State is relieved from its general obligations of protection, contained in Article 1(1) of the Convention, within the framework of which the State is especially obliged to guarantee the rights of persons at risk and must promote the necessary investigations to clarify the facts, followed by the consequences that may be established. Furthermore, also based on the assessment of the Inter-American Court, the lifting of the precautionary measures does not imply an eventual decision on the merits of the dispute.¹²

⁸ I/A Court H.R., Matter of Fernandez Ortega et al., Provisional Measures regarding Mexico, Order of February 7, 2017, considerandums 16 and 17.

⁹ IACHR, Resolution to lift precautionary measures 8/2024, Precautionary Measure No. 81-18, Náthaly Sara Salazar Ayala regarding Peru, March 5, 2024.

¹⁰ I/A Court H.R., Matter of Adrián Meléndez Quijano et al., Provisional Measures regarding El Salvador, Order of August 21, 2013, para. 22; Matter of Galdámez Álvarez et al., Provisional Measures regarding Honduras, Order of November 23, 2016, para. 24.

¹¹ I/A Court H.R., Matter of Velásquez Rodríguez, Provisional Measures regarding Honduras, Order of January 15, 1988, considerandum 3; Matter of Giraldo Cardona et al., Provisional Measures regarding Colombia, Order of January 28, 2015, considerandum 40; Matter of Vélez Loo v. Panama, Provisional Measures, Order of May 25, 2022, considerandum 62.

¹² I/A Court H.R., Matter of Guerrero Larez, Provisional Measures regarding Venezuela, Order of August 19, 2013, considerandum 16; Matter of Natera Balboa, Provisional Measures regarding Venezuela, Order of August 19, 2013, considerandum 16.

19. Lastly, 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 Haiti to respect and guarantee the rights recognized therein, including the life and personal integrity of the person identified in the matter at hand. In this sense, it is up to the State to continue with the respective investigations, as well as the search actions, with the objective of clarifying the facts and circumstances surrounding Lovinsky Pierre-Antoine.

IV. DECISION

20. The Commission decides to lift the precautionary measures granted in favor of Lovinsky Pierre-Antoine.

21. The Commission instructs its Executive Secretariat to notify the State of Haiti and the representatives of this Resolution.

22. Approved on May 28, 2024, by Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice-President; Edgar Stuardo Ralón Orellana; Arif Bulkan; Andrea Pochak; and Gloria Monique de Mees, members of the IACHR.

Tania Reneaum Panszi
Executive Secretary